TRANSCRIPT OF RECORD.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

OCTOBER TERM, A. D. 1895.

164-706

No. 275.

ALDACE F. WALKER, JOHN J. McCOOK AND JOSEPH C. WILSON, RECEIVERS OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY,

Appellants.

vs.

WILSON T. KEENAN, ET AL., INTERVENORS,

Appellees.

MR. ROBERT DUNLAP,
MR. ELDON J. CASSODAY,
Counsel for Appellants.

MR. A. W. GREEN,
MR. HENRY S. ROBBINS,
MR. LOCKWOOD HONORE,
Counsel for Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

TRANSCRIPT OF RECORD FILED SEPTEMBER 14, 1895.
PRINTED RECORD

FILED
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Oliver T. Morton, Clerk.

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INDEX.

	Transcript Page.	Record Page.
Bill	4	
Record Entry	35	
Record Entry	40	
Notice of Motion	41	
Record Entry	43	1
Intervening Petition of W. T. Keenan	44	2
Record Entry	58	13
Intervening Petition of Doud & Keefer	60	14
Answer to Petition of W. T. Keenan	72	22
Record Entry	92	34
Supplemental Answer	93	35
Answer to Petition of Doud & Keefer	98	38
Record Entry	116	
Record Entry	116	
Opinion	118	50
Record Entry	129	
Motion for Appeal	132	
Record Entry	134	
Record Entry	136	56
Record Entry	139	57
Petition for Appeal and Assignment of Errors	142	59
Record Entry	148	63
Certificate of Evidence	150	64
Citation	186	75
Clerk's Certificate	185	76
Stipulation		77

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE NORTHERN DIVISION OF THE NORTHERN DISTRICT OF ILLINOIS.

Union Trust Company of New York,

23,211. *vs.*

Atchison, Topeka & Santa Fe Railroad Company. } *In Chancery.*

In re Wilson T. Keenan,

vs.

Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company. } *Intervening Petition.*

In re Doud and Keefer, et al.,

vs.

Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of the Atchison, Topeka and Santa Fe Railroad Company. } *Intervening Petition.*

On the same day to-wit, the second day of November, in the
43 adjourned October term of said court, 1894, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, District Judge appears the following entry to-wit :

Union Trust Company of New York, 23,211. vs. Atchison, Topeka and Santa Fe Railroad Company.	In Chancery.

On motion, leave is given to W. T. Keenan to file an intervening petition herein. The respondents are ruled to answer the same by Tuesday next at four p. m.

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On the same day to-wit, on the second day of November, 1894, came W. T. Keenan by his solicitors and filed in said clerk's office his Intervening Petition in said entitled cause, which said Petition is in the words and figures following to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

44 In the Circuit Court of the United States for said District and Division.

Union Trust Company of New York,
Complainant
vs.
The Atchison, Topeka and Santa Fe Railroad Company,
Defendant.
In Chancery.
G. N., 23,211.

Union Trust Company of New York,
Complainant,
vs.
The Atchison, Topeka and Santa Fe Railroad Company,
Defendant.
In Chancery.
G. N., 23,276.

Petition of W. T. Keenan, Nov. 2, 94.

To the Honorable Peter S. Grosscup, Judge of said Court, In Chancery Sitting.

Your petitioner, Wilson T. Keenan, respectfully represents unto your Honor:

1. That he resides in and is a citizen of the City of Chicago, State of Illinois, and is and has been for about twenty-nine years engaged in the business of receiving for sale on commission, buying, selling and shipping live stock at the Union Stock Yards heretofore adjoining and now within the corporate limits of said city.

2. That on the 30th and 31st, days of October, 1894, at Kan-
45 sas City, in the State of Missouri, one Patton & Martin delivered to the proper agents of the said defendants and its receivers herein at Kansas City, for transportation over the road of said defendant to your petitioner at the City of Chicago, 109 head of

Intervening Petition of W. T. Keenan filed Nov. 2

cattle; that said live stock was accepted by the said defendant and its receivers for transportation to this petitioner at its Chicago station at the City of Chicago, State of Illinois; and the said defendant and its said receivers therein and thereby agreed with said shipper that they would deliver said live stock to your petitioner at its said Chicago station; and at the time of shipping 55 head of said cattle the said shipper at the request and upon the insistence (as this petitioner is informed and believes,) of the agents at Kansas City, of said defendant and its receivers, signed a certain writing which was also signed by the agent at Kansas City, of said defendant and of its receivers, a copy of which is hereto annexed and made a part hereof as "Exhibit A"; and that at the time of making of such contract the said shipper paid the said agent the sum of $103.40 in full of all freight due said company and its receivers for transportation of said live stock, covered by said contract from said Kansas City to said Chicago station. That upon the other live stock so shipped as aforesaid, the said shipper did not sign a contract or writing with said railroad company with reference thereto, or receive from said agent of said defendant and its receivers, any paper or bill of lading evidencing said shipment, nor did said shipper at Kansas City prepay the freight on said live stock not covered by the contract of shipment made as aforesaid.

3. That pursuant to said contract of shipment, said defendant and its receivers did load said live stock upon four cars in their control; one of said cars being numbered 2601, of Hicks Car
46 Company and the other of said cars being numbered 2731, of same Company, both said cars containing 55 head of said cattle; both of said cars being the cars referred to in "Exhibit A"; and the other of said cars being car, numbered 4863 of Hicks Car Company, and 4129 of the same Company, said cars containing 54 head of cattle and in pursuance of said contract did thereafter in said cars haul and transport said cattle from said Kansas City to the City of Chicago, where the same arrived on or about the 1st and 2nd days of November, 1894. That prior to the arrival of said cattle in Chicago, your petitioner became by purchase, and still is, the owner of all said cattle, and by reason thereof and the terms of said contracts of shipment, became entitled to have said cattle by said receivers herein delivered to him in said Chicago. And that the amount of freight on said car numbered 4129 and 4863 for transportation of said cattle in said cars contained from Kansas City to said Chicago station, as charged and fixed by the proper agents of said defendant and its receivers, and demanded of this petitioner, is the sum of $108.80.

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T. Keenan,
Nov. 2, '94.

5. That the said defendant and its receivers are, and were at the time of each of said shipments aforesaid, common carriers and charged with all the duties and responsibilities imposed by law upon such carriers; and that upon the acceptance by said receivers of said shipments of cattle, it became and was the duty of said receivers not only to transport said cattle over the road of said defendant from said Kansas City to the eastern terminus of its road at Chicago, but it became and was the duty of said receivers and said defendants, as common carriers to provide, furnish and maintain, at their cost and expense, and as a part of the service
47 for which they are entitled by law to collect freight, and without any charge to shippers additional to said freight, platforms, chutes, yards, stations and cattle pens, adequate and suitable for conveniently and safely unloading, caring for until delivery, and delivering said cattle, as well as other cattle received by said shippers at the Chicago station of said defendant.

6. That said defendant has never, since it commenced to operate its road into the City of Chicago, had or provided any platforms, chutes, yards, stations or cattle pens of its own suitable for unloading, caring for, and delivering cattle and other live stock consigned to said City of Chicago, nor have said receivers now any such platforms, chutes, yards, stations or cattle pens in their control, belonging to or controlled by said defendant, but that said defendant and its receivers are wholly without such facilities belonging to said defendant, for unloading and delivering live stock at the City of Chicago; that said defendant up to the time of the appointment of said receivers, and said receivers since that time, have always availed themselves of the facilities for receiving and delivering live stock from railroads, which are furnished to the different railroads entering the City of Chicago by the Union Stock Yard and Transit Company, in the manner hereinafter stated.

7. That the Union Stock Yards and Transit Company is a corporation which was organized under a special act of the legislature of the State of Illinois, passed on February 13th, 1865, with power to construct upon certain land in convenient proximity to the then southern limits of the City of Chicago necessary yards, structures and buildings for the accommodation of the business of a general union stock yards for cattle and other live stock, and
48 with power to connect said stock yards by necessary railroad tracks and side tracks with the various railroads entering the city of Chicago, and that shortly after the organization of said company it constructed at large expense such structures and yards ad-

Intervening Petition of W. T. K... filed Nov...

joining the then City of Chicago on the south, with sufficient capacity and facilities for conveniently and safely receiving and delivering cattle and other live stock from all the railroads entering the city of Chicago, and by the construction of railroad tracks and sidings connected said stock yards with all of the railroads then entering the city of Chicago, and from thenceforth to the present time has maintained and maintains said stock yards, tracks and side tracks and has from time to time increased said tracks and side tracks and yard facilities to meet the increasing demand therefor; that ever since the construction of said yards and tracks the various railroads entering the city of Chicago, instead of constructing and maintaining the necessary platforms, chutes, yards, stations and cattle pens of their own for the unloading and delivery of live stock, have, either by contract or license (the terms of which, if any, are unknown to your petitioner), availed themselves of the facilities afforded by said stock yards for the unloading and delivery of live stock transported to Chicago over their said several lines, and each of them has made said stock yards of said Union Stock Yard and Transit Company its depot and station for the unloading and delivery of live stock brought to Chicago over its line. That the Union Stock Yard and Transit Company has never furnished, and does not now furnish, engines to draw cars containing live stock from the points of junction of its said tracks with the lines of said several roads to its yards, and keeps no engines or cars for transporting live stock between said points, but allows each railroad company to draw over its
49 said tracks to said yards the cars of live stock brought to Chicago over the line of its road. And that when the defendant herein extended its line so as to make Chicago the eastern terminus thereof, it connected its said road with the tracks of said Union Stock Yard and Transit Company, the point of said connection being not to exceed miles in distance from the stock yards of said company, and instead of constructing suitable platforms, chutes, yards, stations and cattle pens of its own for the receiving and delivery of live stock brought to Chicago over its line, said defendant availed itself of said facilities theretofore furnished by said Union Stock Yard and Transit Company to other lines of road entering Chicago. And that thenceforth up to the time of the appointment of said receivers herein defendant and since that time up to the present time the said receivers, have availed themselves of such facilities so furnished by said Union Stock Yard and Transit Company, and have thereby adopted and made the said yards of said Stock Yard and Transit Company defendant's station and depot for the unloading and delivery of

ening on of Keenan, Nov. 2 '94.

cattle and other live stock shipped to Chicago over the road of said defendant. And that the four cars of cattle mentioned above, upon their arrival at the city of Chicago, were by the agents of said receivers, without the direction, request or co-operation of your petitioner, transported over the tracks of said Union Stock Yard and Transit Company from their point of junction with the tracks of said defendant to said Union Stock Yard and Transit Company's said yards, using the engines of this defendant for that purpose, and were there unloaded by the agents of said receivers without any direction, request, act or co-operation of this petitioner, the said receivers thereby, in the absence of any yards owned or controlled by them, adopting the said yards of the Union Stock Yard and Transit Company as their station for the unloading and delivery of said live stock.

8. That your petitioner, learning of the arrival of his said cattle at said city of Chicago, and ascertaining that said receivers had unloaded the same into the yards of said Union Stock Yard and Transit Company as aforesaid, and desiring the delivery to him of the said cattle, tendered to the duly authorized agents of said receivers in the city of Chicago the amount of freight and other charges due upon each of said cars, that is to say, the sum of $55.99 for said car numbered 4863, the sum of $56.81 for said car numbered 4129, (the freight to Chicago upon the cattle in cars numbered 2601 and 2731 having as heretofore alleged been prepaid at Kansas City); but the agents of said receivers at the City of Chicago, claiming additional freight by reason of weight in excess of that assumed at Kansas City on said cars numbered 2601 and 2731 of $7.05 and also $3.00 for feed on road, your petitioner likewise tendered to said agents of said receivers said sum of $10.05, and demanded of said agents of said receivers the delivery to him of the said cattle so belonging to him and so received by said receivers in Chicago in said four cars; but that the said receivers, through their said agents, refused to accept said freight or to deliver said cattle, or any of them, until your petitioner should pay in addition to said freight the further sum of two dollars per car, being the sum of eight dollars, which said receivers, through their said agents, claim the right to collect from your petitioners as compensation to them for transporting said cattle over the tracks of said Union Stock Yard and Transit Company from their junction with the line of road of said defendant to said yards of said Stock Yard and Transit Company.

And your petitioner, being advised by counsel, and believing

Intervening Petition of W. T. Keenan filed Nov.

that it is unjust and unreasonable for said receivers to make, and that they have no right in law to exact said charge of two dollars per car, in addition to their freight to Chicago, refused to accede to said demand; and that the said cattle are now withheld from your petitioner, and are enclosed in pens in the control of said Union Stock Yard and Transit Company, which said company claims to hold the same subject to the orders and control of said receivers, and refuses to deliver the same to your petitioner without the orders of said receivers or their authorized agents, there being, as your petitioner is informed and believes, some arrangement between said Stock Yard and Transit Company and said receivers of said defendant, whereby said Stock Yard Company, for and as the agent of said receivers, unload and retain possession of said stock received over the line of said defendant, until delivery thereof to the consignees, and collection from the consignees thereof the freight and charges due to said receivers thereon.

9. That your petitioner is informed and believes that the only reason given by said receivers, or any of their agents, for the imposition of said two dollars per loaded car, is that said Union Stock Yard and Transit Company has, since about June 1st, 1894, exacted, and now exacts from said receivers of said defendant, and from all other railroads similarly situated, as compensation for the use of the tracks of said Union Stock Yard and Transit Company, a charge of forty cents per loaded car, and a like sum for the
52 return of the said car empty. That your petitioner is informed and believes, that from the completion of said tracks of said Stock Yard and Transit Company down to June 1st, 1894, the said company did not exact from any of the roads using the said tracks to its said stock yards a trackage charge of forty cents per car, or any other sum, for cars containing live stock; and that neither the defendant nor said receivers, nor any of the other roads availing themselves of the track facilities of said stock yard company, prior to June 1st, 1894, claimed the right to, or attempted to exercise the right, to charge any sum in addition to freight for transporting live stock from the lines of said railroads to said stock yards. That the conditions under which said live stock comes in over the lines of said defendant and other roads, and is delivered at the yards of said Stock Yard and Transit Company, are the same now as they have always been, except that said trackage charge has since June 1st, 1894, been imposed by said Stock Yard and Transit Company upon cars containing live stock.

10. That your petitioner is advised by counsel that the

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imposition by said stock yard company of a trackage charge of forty cents per car each way, or any other sum, for cars transported by said railroad companies over said tracks of said Stock Yard and Transit Company, constitutes no legal justification or excuse for the imposition by said receivers of any charge additional to freight upon live stock shipped over the road of said defendant to Chicago, but that it is the duty of said defendant and its receivers, as common carriers, to provide at the City of Chicago, as part of the service for which freight is paid by shippers, platforms, chutes, yards, stations and cattle pens, suitable and convenient for the unloading, caring for and delivery of live stock. And that if said railroad and its said receivers, instead of providing its own
53 yards for that purpose, avails themselves of yards constructed by said Union Stock Yard and Transit Company, they have no right to impose upon your petitioner, or any other shippers of live stock, and charges for the use of such platforms, yards, stations, or cattle pens, or for transporting said stock to said yards, but that said railroad and its said receivers, by adopting the said yards of the said stock yard company as its said depot and station, and running thereto its cars to that depot over the tracks of said Stock Yard and Transit Company, either by contract with or license of said company, thereby make said tracks a part of said defendant's said line, and are obliged by law to accord to your petitioner and other shippers of live stock to the City of Chicago (without any charge in addition to the freight to said Chicago) the use of their tracks equally with any other tracks of said defendant railroad company in said City of Chicago, the use of which are necessary to transport and deliver shipments at a suitable station and place of delivery at the City of Chicago.

Wherefore, your petitioner makes parties defendant hereto, Aldace F. Walker, J. J. Mc. Cook and J. C. Wilson, the receivers appointed herein in the above entitled cause, and prays that an order be entered herein requiring said receivers by a short day to be fixed by said order to make answer to this petition, but not under oath, answer under oath being hereby waived; and that an order may be entered in the above entitled causes requiring said receivers, their agents and employees, to forthwith deliver to your petitioner the four carloads of live stock above mentioned, upon the payment of the amounts of freight above stated, and without exacting said charge of two dollars per car; and that said
54 receivers be directed by the order of this court either to furnish at said City of Chicago, platforms, chutes, yards, stations and cattle pens suitable for safely unloading, caring for and delivering

live stock, or, in default thereof, and until said receivers of said defendant shall so provide said platforms, chutes, yards, stations and cattle pens, the said receivers be directed to deliver all live stock consigned over the lines of said defendant to your petitioner, at the yards of said Union Stock Yard and Transit Company, without exacting or collecting from your petitioner said charge of two dollars per car, or any other sum by way of freight for transporting said live stock from the point of junction of the line of the said defendant with said tracks of said Stock Yard and Transit Company to the proper unloading chutes at said stock yards of said Stock Yard and Transit Company; and that your petitioner may have such other and further relief in the premises as may be just and equitable.

Intervening Petition of W. T. Keen... filed Nov. 2, ... vening ion of ...Keen Nov. 2, ...

And your petitioner will ever pray.

W. T. KEENAN,
GREEN & ROBBINS,
Complts. Solrs.

A. W. GREEN,
HENRY S. ROBBINS,
Of Counsel.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

55 Wilson T. Keenan, being first duly sworn, deposes and says, that he is the petitioner mentioned in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true in substance and in fact, except as to matters therein alleged on information and belief, and as to those, he believes them to be true.

WILSON T. KEENAN.

Subscribed and sworn to before me, this 2nd day of November, A. D. 1894.

JENNIE MULLEN,
Notary Public.

[SEAL]

ervening
ition of
T. Keenan,
d Nov. 2,'94.

56 EXHIBIT "A."

(67)

Atchison, Topeka & Santa Fe Railroad Company

LIVE STOCK CONTRACT.

Way Bill Nos.....,.....,.....,.....

State Numbers of Way-Bills pertaining to shipments of Live Stock mentioned in this Contract.

DUPLICATE.

No. of Cars.	Initials.
.2601.	..Hn..
.2731.	.. Y..
.....	.....
.....	.....
.....	.....
.....	.....

NOT NEGOTIABLE.

.....K Csys....Station,....10/30....1894.

Received of..Patten & Martin....Cars..2..

(Cattle Head) to be delivered at..Chicago..

Station, at rate of Trff.

...Mjs... Per..for Horses or Mules.
.....Per.. " Cattle or Hogs.
.....Per.. " Sheep.

As per condition of current tariffs.

Consigned to....W. T. Keenan.....

at.....Chicago.....

1. Agreement made between the Atchison, Topeka & Santa Fe Railroad Company, party of the first part, and.....party of the second part: Witnesseth, that in consideration of above-named rates and other valuable considerations (hereby acknowledged)—the said party of the second part hereby relieves said party of the first part from the liability of a common carrier in the transportation of said stock, and agrees that such liability shall be only that of a private carrier for hire.

2. And said party of the second part hereby accepts for such transportation the cars provided by said company, for use in the shipment of said stock, and hereby assumes all risk of injury which the animals, or any of them, may receive in consequence of their

☞NOTICE.—Agents must have shipper sign duplicate in Copying Ink and take an impression of same before forwarding to auditor of Freight Receipts.

Intervening Petition of W. T. Keen filed Nov. 2,

being wild, unruly or weak, or maiming each other or themselves, or in consequence of heat or suffocation or other ill effects of being crowded in the cars, or on account of being injured by the burning of hay, straw or other material used by the owner for feeding or bedding the stock or otherwise, and also all risk of damage or injury or loss whatever, which may be sustained by reason of any delay or detention in such transportation, whether occasioned by any mob, strike or threatened violence to person or property from any source, or injury to tracks or yards, and any and all other causes, whether mentioned or not, and all risks of the escape of any portion of said stock, or of loss or damage from any other cause or thing, not resulting from the willful negligence of the agents of said party of the first part.

3. And said party of the second part further agrees that he will load and unload said stock at his own risk, and feed, water and attend the same at his own expense and risk while it is in the stock yards of the party of the first part awaiting shipment, and while on the cars, or at feeding or transfer points, or where it may be unloaded for any purpose.

4. And it is further agreed, that the said party of the second part will see that said stock is securely placed in the cars furnished, and that the cars are securely and properly fastened, so as to prevent the escape of said stock therefrom.

5. And it is further agreed, that in case the said party of the first part shall furnish laborers to assist in loading or unloading said stock, they shall be subject to the orders, and deemed employes of said party of the second part, while so assisting.

6. And for the consideration before mentioned, said party of the second part further agrees, that as a Condition Precedent to his right to recover any damages for loss or injury to said stock, he will give notice in writing of his claim therefor to some officer of said party of the first part, or its nearest station agent, before said stock is removed from the place of destination above mentioned, or from the place of delivery of the same to said party of the second part, and before such stock is mingled with other stock.

7. It is understood and agreed that the stock shipped under this contract is transported at the above rates upon the representation of the second party that its value does not exceed $100.00 for each horse or pony (gelding, mare or stallion), mule or Jack,

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ed Nov. 2,'94.

$50.00 for each ox, bull or steer, $30.00 for each cow, $10.00 for each calf, $10.00 for each hog, $3.00 for each sheep or goat; and the first part shall not be liable for loss or damage to said stock in excess of those sums, nor for any sum in excess of their fair cash value at the time and place of shipment.

8. Agents of this Company are not authorized to agree to forward Live Stock to be delivered at any special time.

9. As to stock consigned to Stock Yards, the tracks of which connect with those of the first party, or to any person at such yards, the second party agrees that all liability of the first party shall end when it delivers the cars containing the stock upon the tracks of said Stock Yards Company; and the first party shall not be liable for any loss or damage which may thereafter arise to said stock from any cause.

10. All the matters written or printed on the back hereof are made a part of this instrument as fully and effectually as if set forth in its body.

11. If the whole or any part of any provision of this instrument shall be adjudged void by a tribunal of competent jurisdiction, the remaining provisions or parts of provisions in themselves valid shall not be effected thereby, but shall be as valid and enforceable as if the invalid provision or part of provision had not been inserted therein.

12. The party of the first part shall not be liable for loss or injury to any of said stock unless the same shall be affirmatively proven to have been caused while on its railway through its gross negligence or that of some of its agents or servants.

13. THE EVIDENCE THAT THE SAID PARTY OF THE SECOND PART, AFTER A FULL UNDERSTANDING THEREOF, ASSENTS TO ALL THE CONDITIONS OF THE FOREGOING CONTRACT IS HIS SIGNATURE HERETO.

J. Z. RORABACK,
Agent for the Company.

Witness:
J. CORNING,

PATTEN & MARTIN,
Shipper.

(To be other than either signer of the contract.)

Executed in duplicate.

[Endorsed]: Filed Nov. 2, 1894.

S. W. BURNHAM, Clerk.

58 Afterwards to-wit, on the third day of November, in the adjourned October term of said court, 1894, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to-wit:

Union Trust Company of New York,
23,211. vs.
Atchison, Topeka & Santa Fé Railroad Company. } In Chancery.

Leave is hereby granted by the court to Doud and Keefer, et al., to file an intervening petition herein. Record Ent

It is further ordered that the respondents answer said petition by Tuesday next at 4 P. M.

59 On the same day to-wit, the third day of November, 1894, came Doud and Keefer, et al., and by leave of court first had and obtained filed in the clerk's office of said court, their petition which said petition is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

In the Circuit Court of the United States, for said Northern
60 District and Division.

Union Trust Company of New York,
Complainant,
vs.
Atchison, Topeka & Santa Fe Railroad Company,
Defendant.
In Chancery.
G. N. 23,211.

Union Trust Company of New York,
Complainant,
vs.
Atchison, Topeka & Santa Fe Railroad Company,
Defendant.
In Chancery.
G. N. 23,276.

To the Hon. Peter S. Grosscup, Judge of said Court, in Chancery, sitting:

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ion of
& Keefer,
Nov. 3, '94.

Your petitioners, Doud & Keefer, W. L. Tanblyn, George W. Shannon, M. P. Buel, Simon O'Donnell, Rappel Lamb & Co., Wood Bros., Campbell Commission Co., L. A. McCoy, Brown, Beel & Ballinger, H. B. Steck & Co., Gregory & Hastings, Brown St. John Co., John S. Alexander & Co., John Adams & Son, C. A. Mallory, Martin Bros.. Chicago Live Stock Commission Co., Texas Live Stock Commission Co., Dailey Taylor & Co., W. H. Thompson, Jr., McCreel and Haag & Co., Reynolds Westcott & Co., Conover & Herrick, Ingeverson Bros. & Smith, Byers Moore & Byers, C. L. Shattuck & Co., Wagner Bros. & Co., J. H. Wood, Martin Horn & Younge, Dickson & Lott, Green Mills & Co., Darlington Smith & Boyden, P. Burns, Godair Harding & Co., respectfully represent unto your Honor:

61 1. That they reside in and are citizens of the City of Chicago, State of Illinois, and are now and have been for some

Intervening Petition of Doud & Keefr, filed Nov. 3, '1.

time past severally engaged in the business of receiving for sale on commission, buying, selling and shipping live stock at the Union Stock Yards, heretofore adjoining and now within the Corporate limits of said city, and that in the course of their business they have consigned to them from time to time live stock shipped from various points on the lines of, or beyond the lines of, said defendant herein to the City of Chicago; that said shipments in the aggregate are of the value of many thousands of dollars.

2. That said defendant and its receivers are, and have been since the completion of said defendant's railroad to the City of Chicago, common carriers of live stock, charged with all the duties and responsibilities imposed by law upon such carriers; and that upon the acceptance by said receivers of live stock shipped to Chicago, it becomes and is the duty of said receivers not only to transport said cattle over the road of said defendant from said points of shipment to said Chicago, but it becomes and is the duty of said receivers and said defendant, as carriers as aforesaid, to provide, furnish and maintain at their cost and expense, and as a part of the service for which they are entitled by law to collect freight, and without any charge to your petitioners or other shippers additional to said freight, platforms, chutes, yards, stations and cattle pens adequate and suitable for conveniently and safely unloading, caring for until delivery, and delivering live stock so shipped as aforesaid and transported by said receivers of said defendant to Chicago.

62 3. That said defendant has never, since it commenced to operate its road into the City of Chicago, had or provided any platforms, chutes, yards, stations or cattle pens of its own, suitable for unloading, caring for, and delivering cattle and other live stock consigned to said City of Chicago, nor have said receivers now any such platforms, chutes, yards, stations or cattle pens in their control, belonging to or controlled by said defendant, but that said defendant and its receivers are wholly without such facilities belonging to said defendant for unloading and delivering live stock at the City of Chicago; that said defendant up to the time of the appointment of said receivers, and said receivers since that time, have always availed themselves of the facilities for receiving and delivering live stock from railroads which are furnished to the different railroads entering the City of Chicago by the Union Stock Yards & Transit Company, in the manner hereinafter stated.

4. That the Union Stock Yard & Transit Company is a cor-

Intervening Petition of Doud & Keefer, Nov. 3, '94.

poration which was organized under a special act of the legislature of the State of Illinois, passed on February 13th, 1865, with power to construct upon certain land in convenient proximity to the then southern limits of the City of Chicago, necessary yards, structures and buildings for the accommodation of the business of a general union stock yards for cattle and other live stock, and with power to connect said stock yards by necessary railroad tracks and side tracks with the various railroads entering the City of Chicago, and that shortly after the organization of said company it constructed at large expense such structures and yards adjoining the then City of Chicago on the south,

63 with sufficient capacity and facilities for conveniently and safely receiving and delivering cattle and other live stock from all the railroads entering the city of Chicago, and by the construction of railroad tracks and sidings, connected said yards with all the railroads then entering the city of Chicago, and from thenceforth to the present time has maintained and maintains said stock yards, tracks and side tracks, and has from time to time increased said tracks and side tracks and yard facilities to meet the increasing demand therefor; that ever since the construction of the said yards and tracks, the various roads entering the city of Chicago, instead of constructing and maintaining the necessary platforms, chutes, yards, stations and cattle pens of their own for the unloading and delivery of live stock, have, either by contract or license (the terms of which, if any, are unknown to your petitioners), availed themselves of the facilities afforded by said Union Stock Yards Company for the unloading and delivery of live stock transported to Chicago over their roads, and each of them has made said stock yards of said Union Stock Yards & Transit Company its depot and station for the unloading and delivery of live stock brought to Chicago over its line. That the Union Stock Yard & Transit Company has never, and does not now, furnish engines to draw cars containing live stock from the points of junction of its said tracks with the lines of said several roads to its yards, and keeps no engines or cars for transporting live stock between said points, but allows each railroad company to draw over its said tracks to said yards the cars of live stock brought to Chicago over the line of its road.

That when the defendant herein extended its line so as to

64 make Chicago its eastern terminus thereof, it connected its said line with the said tracks of said Union Stock Yards & Transit Company by running arrangements or contract with the Grand Trunk Railway Company, the point of said connection of said tracks so used with said tracks of said Transit Company being not to exceed one-half mile from the usual place of delivery of live

Intervening Petition of Doud & Keefer, filed Nov. 3, '94.

stock at said Stock Yard & Transit Company. And instead of constructing suitable platforms, chutes, stations, yards and cattle pens of its own for the receiving and delivery of live stock brought to Chicago over its line, said defendant availed itself of the facilities theretofore furnished by said Stock Yard Company to other lines of road entering Chicago. And that thenceforth up to the time of the appointment of the said receivers herein, defendant, and since that time up to the present time the said receivers, have availed themselves of such facilities so furnished by said Union Stock Yard and Transit Company, and have thereby adopted and made the said yards of said Stock Yard Company defendant's station and depot for unloading and delivery of cattle and other live stock shipped to Chicago over the road of said defendant. And that cars of live stock, upon their arrival at the City of Chicago over the lines of said defendant, are, by the agents of said receivers, without any request or direction of your petitioners or other shippers, transported by the agents of said receivers over the tracks of said Union Stock Yard & Transit Company from their point of junction with the tracks of said defendant to said Union Stock Yards, using the engines of this defendant for that purpose, and there unloaded by the agents of said receivers, without any request or direction of your petitioners, or other shippers, the said receivers and said defendants thereby, in the absence of any platforms, chutes, yards, stations and cattle pens controlled by them, adopting the said yards of the Union Stock Yard & Transit Company as their station at Chicago for the unloading and delivery of live stock.

5. That since about June 1, 1894, the said receivers of said defendant have claimed the right to demand from yonr petitioners upon all shipments of live stock, two dollars per car charges in additional to the regular freight and other proper charges for caring for said stock in transit, claiming the said two dollars per car as compensation to said receivers for transporting said live stock over the tracks of said Union Stock Yard & Transit Company from their junction as aforesaid with the road of said defendants to said yards of said Stock Yard & Transit Company. And that your petitioners have been forced to pay said charge upon such live stock as have been consigned to them over said defendant's road, in order to secure a delivery to them of their said shipments, the said receivers, through their said agents, refusing to deliver such live stock without the payment of said two dollars per car; but your petitioners are advised by counsel that said charge of two dollars per car is illegal, unjust and unreasonable for said receivers to

Intervening Petition of Doud & Keefer, filed Nov. 3, '94.

make, and they have no right in law to exact said two dollars in addition to said freight to Chicago.

6. That your petitioners are informed and believe that the only reason given by said receivers, or any of their agents, for the imposition of said two dollars per loaded car, is that said Union Stock Yard & Transit Company has, since about June 1st, 1894, exacted and now exacts from said receivers of said defendant, and from all other railroads similarly situated as compensation for the use of the tracks of said Union Stock Yard & Transit Company, a charge of forty cents per loaded car and a like sum for the return of the said car empty. That your petitioners are informed and believe that from the completion of said tracks of said Stock Yard and Transit Company down to June 1st, 1894, the said company did not exact from any of the roads using the said tracks to its stock yards a trackage charge of forty cents per car or any other sum, for cars containing live stock; and that neither the defendant nor said receivers, nor any of the other roads availing themselves of the track facilities of said Stock Yard Company, prior to June 1st, 1894, claimed the right to, or attempted to exercise the right, to charge any sum in addition to freight for transporting live stock from the lines of said railroads to said stock yards. That the conditions under which said live stock comes in over the lines of said defendant and other roads, and is delivered at the yards of said Stock Yard and Transit Company, are the same now as they have always been, except that said trackage charge has since June 1st, 1894, been imposed by said Stock Yard and Transit Company upon cars containing live stock.

7. That your petitioners are advised by counsel that the imposition by said Stock Yard Company of a trackage charge of forty cents per car each way, or any other sum, for cars transported by said railroad companies over said tracks of said Stock Yard and Transit Company, constitutes no legal justification or excuse for the imposition by said receivers of any charge additional to freight upon live stock shipped over the road of said defendant to Chicago, but that it is the duty of said defendant and its receivers, as common carriers, to provide at the city of Chicago, as part of the service for which freight is paid by shippers, platforms, chutes, yards, stations and cattle pens, suitable and convenient for the unloading, caring for and delivery of live stock. And that if said railroad and its said receivers, instead of providing its own yards for that purpose, avails themselves of yards constructed by said Union Stock Yard and Transit Company, they have no right to

Intervening Petition of Doud & Keefer. filed Nov. 3, '94.

impose upon your petitioners, or any other shippers of live stock, any charges for the use of such platforms, yards, stations or cattle pens, or for transporting said stock to said yards, but that said railroad and its said receivers, by adopting the said yards of the said Stock Yard Company as its said depot and station, and running thereto its cars to that depot over the tracks of said Stock Yard and Transit Company, either by contract with or license of said company, thereby make said tracks a part of said defendant's said line, and are obliged by law to accord to your petitioner and other shippers of live stock to the city of Chicago (without any charge in addition to the freight to said Chicago), the use of their tracks equally with any other tracks of said defendant railroad company in said city of Chicago, the use of which are necessary to transport and deliver shipments at a suitable station and place of delivery at the city of Chicago.

8. That your petitioners are informed and believe that at the
67 City of Omaha, in the State of Nebraska, and at Kansas City, in the State of Missouri, and at East St. Louis, in the State of Illinois, there are located stock yards where are received large shipments of live stock; and that the persons doing business at the said stock yards at said places are actively competing throughout the entire west with your petitioners, and other persons dealing with live stock in the City of Chicago, to secure consignments to said yards of live stock from various points in the western country; that at none of said points, as your petitioners are informed and believe, do the railroads themselves furnish the necessary platforms, chutes, yards, stations and cattle pens for receiving and delivering live stock, but that at each of said points said facilities for the receiving and delivering of live stock are furnished by independent corporations, as at the said City of Chicago, by said Union Stock Yard & Transit Company; that said defendant at Kansas City availed itself of the stock yards so furnished by said independent stock yards company instead of furnishing facilities itself; and your petitioners are further informed and believe that neither at Kansas City do the receivers of this defendant, nor at any of said points, do the railroads running thereto, exact or impose upon shippers or receivers of live stock at the stock yards at said points any charge in the nature of switching charges, in
68 addition to freight from the points of shipment to said cities of Omaha, Kansas City and East St. Louis; and that the imposition by the receivers of said defendant and the other railroads at Chicago of said charge of $2.00 per car upon cars of live stock shipped to Chicago, has caused and is causing, constant irrita-

Intervening Petition of Doud & Keefer, filed Nov. 3, 94.

tion among shippers of live stock to said Chicago market, and is creating much prejudice in the minds of said shippers against Chicago as a market for live stock; and such charge as imposed, and, if continued, will impose upon your petitioners and other receivers of live stock at said Union Stock Yards, serious loss of business, because of the diversion of shipments of live stock from said Chicago market to said competing points.

9. That the unfairness of said charge of $2.00 per car is further shown by the fact that upon shipments of live stock over the lines of road of this defendant, and other roads, as your petitioners are informed and believe, from western points through Chicago to points beyond Chicago, where said live stock is unloaded in transit at Chicago for food and rest, said charge of $2.00 cer car is not claimed or exacted by said receivers, and no additional rate of freight exacted by reason of the transportation of said live stock from the point of junction of this defendant's road over the tracks of said Union Stock Yard & Transit Company to its yards.

69 Wherefore, your petitioners make parties defendant hereto, Aldace F. Walker, J. J. McCook and J. C. Wilson, the receivers herein and pray that an order may be entered herein requiring said receivers by a short day to be fixed by said order to answer said petition but not under oath, answer under oath being waived; and that an order may be entered herein directing said receivers either to furnish at said City of Chicago, platforms, chutes, yards, stations and cattle pens suitable for safely unloading, caring for and delivering live stock, and in default thereof, and until said receivers or said defendants shall so provide said platforms, chutes, yards, stations and cattle pens, the said receivers be directed to deliver all live stock consigned over the lines of said defendant to your petitioners, and other persons receiving consignments of live stock at said City of Chicago, at the yards of the said Union Stock Yard & Transit Company without exacting or collecting from your petitioners or other shippers or receivers of live stock at Chicago, said charge of $2.00 per car or any other sum by way of freight for transporting said live stock from the point of junction of the line of said defendant with said tracks of said Union Stock Yard & Transit Company to the proper unloading chutes of said Stock Yard & Transit Company; and that your petitioners may have such other and further relief in the premises as may be just and equitable.

Intervening Petition of Doud & Keefer, filed Nov. 3, '94.

And your petitioners will ever pray, etc.

GREEN & ROBBINS,
Counsel for Petitioners.

70 I believe the two dollar terminal charge to be unjust and a discrimination against the Chicago market.

W. H. Thompson, Jr.,
McCausland Hoag & Co.,
Reynold Westcott & Co.,
Conover & Herrick,
Inguerson Bros. & Smith,
Byers, Moore & Buers,
C. L. Shattuck & Co.,
Wagner Bros. & Co.,
J. H. Wood,
Martin Horn & Younge,
Dickson & Lott,
Green Mills & Co.,
Darlington, Quick & Boyden,
P. Burns,
Godair, Harding & Co.,
Dowd & Keefer,
W. L. Tamblyn,
George W. Shannon,
M. P. Buel,
Simon O'Donnell,
Rappal Lamb & Co.,
Wood Bros.,
Campbell Commission Co.,
L. A. McCoy,
Brown, Beel & Ballinger,
H. B. Steck & Co.,
Gregory & Hastings,
Brown, St. John & Co.,
John S. Alexander & Co.,
John Adams & Sons,
C. A. Mallory,
Martin Bros.,
Chicago Live Stock Com. Co.,
Texas Live Stock Commission Co.,
Dailey Taylor & Co.,

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.
NORTHERN DIVISION.

71 L. A. McCoy, being first duly sworn deposes and says, that he is one of the petitioners mentioned in the foregoing petition, that he has read the same and knows the contents thereof, that the said is true in substance and in fact, except as to matters therein alleged to be on information and belief, and as to those matter he believes them to be true.

L. A. McCOY.

Intervening Petition of Doud & Keefer, filed Nov. 3, '94.

Subscribed and sworn to before me, this 3d day of November, A. D. 1894.

WILLIAM H. BOPREY,
Notary Public.

[SEAL]

Copy.

[Endorsed]: Filed Nov. 3, 1894.

S. W. BURNHAM,
Clerk.

72 Afterwards, to-wit: On the seventh day of November, 1894, came the receivers in said entitled cause and filed in the clerk's office of said court, their answer to the petition of Wilson T. Keenan. Which said answer is in the words and figures following, to-wit:

UNITED STATES OF AMERICA, } ss.
STATE OF ILLINOIS. }

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

Union Trust Company of New York, Complainant, vs. Atchison, Topeka & Santa Fe Railroad Company, Defendant.	In Chancery, G. N. 23,211.
Union Trust Company of New York, Complainant, vs. Atchison, Topeka & Santa Fe Railroad Company, Defendant.	In Chancery, G. N. 23,276.
In re Wilson T. Keenan, vs. Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company.	Intervening Petition.

The answer of the receivers of the Atchison, Topeka & Santa Fe Railroad Company to the petition of Wilson T. Keenan:

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

73 These defendants saving and reserving unto themselves all benefit and advantage whatsoever of objection or exception that might be made to the many uncertainties, errors and insufficiencies of said intervening petition, and praying the same advantage hereby as though they had demurred to said petition, for answer thereunto, these defendants answering, say:

1. They admit that the petitioner is a citizen and resident of said City of Chicago and that he is and has been for some years last past engaged in the business of receiving for sale on commission, buying, selling and shipping live stock at the Union Stock Yards in said city; and further aver that during all said time said petitioner has had a place of business at said stock yards, which at the times of the said shipments in said petition named was well known to the said consignees of said stock and to these defendants.

2. These defendants admit that on or about the 30th and 31st days of October, A. D. 1894, Patton & Martin delivered to the proper agents of these defendants at Kansas City, in the State of Missouri, for transportation over the Atchison, Topeka & Santa Fe Railroad to said petitioner at the City of Chicago, in the State of Illinois, 109 head of cattle; and at the request of said Patton & Martin, said cattle were received by said agents for transportation to said petitioner at said City of Chicago; and that, thereupon, said agents at Kansas City, at the request of said consignees and said petitioner, entered into said live stock contract covering
74 two carloads of said cattle which were delivered to said agents on October 30, 1894, at said Kansas City, a copy of which said live stock contract is attached to said petition and marked Exhibit A, in and by which contract these defendants agreed to transport said live stock from said Kansas City to said City of Chicago, and to give to said petitioner, W. T. Keenan, free transportation from said Kansas City to Chicago for the purpose of accompanying said stock and free return transportation from Chicago to Kansas City, upon the terms and conditions named in said contract, at and for the tariff rates then published and in force for such service; and admit that said shippers then and there paid to said agent the sum of $103.40 on account of the freight on two carloads of said live stock, but deny that said sum was paid by said consignees or accepted by said agents as full payment of such freight, and aver the truth to be that at the time of said shipment the established and published freight rate for transportation of cattle from Kansas City to Chicago was 23½ cents per hundred weight in carload lots with the minimum weight

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

of 20,000 pounds per car; and for all live stock to be delivered at the Union Stock Yards or to any industries located on the tracks of the Union Stock Yards & Transit Company, or of the Indiana State Line Railway Company, an additional charge of $2.00 per car for switching charges for hauling such cars from the tracks of the said Atchison, Topeka & Santa Fe Railroad Company in said City of Chicago to such points on other railroads in said city, which schedule of rates and charges were, prior to said
75 October 30, 1894, to-wit, on June 1, 1894, duly posted at the freight office of these defendants in the operation of said railroad and filed with the Interstate Commerce Commissioners, and were well known to said consignors and to said petitioner, and that it was in and by said live stock contract provided that said transportation of said live stock should be made upon the tariff rates then and there established and existing. These defendants admit that upon the other two cars of live stock transported, said petitioner did not ask for or receive such live stock contract or any bill of lading therefor, and aver that such live stock contract providing for the free transportation or carriage of one person with each two carloads of cattle are issued only upon the request and for the benefit of the shipper; and that upon said other two car of cattle, bills of lading were duly issued by the agents of these defendants but they were not delivered to said consignors, because neither said consignors nor said petitioner asked for the same.

3. Further answering these defendants admit, that said cattle were loaded into certain cars of the Hicks Car Company, said cars being numbered 2,601 and 2,731 respectively, on October 30, 1894, and into cars of the Hicks Car Company numbered 4,863 and 4,129 respectively, on November 1, 1894; and that the first two of said cars were the cars referred to in said Exhibit A, and that in pursuance of said contracts for transporting the same, all the cattle so delivered to the agents of these defendants at Kansas City were transported thence to the City of Chicago on or about the first and second days of November, 1894; but these de-
76 fendants neither admit nor deny the averment of said petition as to the number of cattle contained in said cars or either of them, but state that they have no accurate knowledge thereabout; they neither admit nor deny that the petitioner was, prior to the arrival of said cattle in Chicago, or now is, the owner of the same, but ask that strict proof be required concerning such ownership. They admit that by reason of the terms of the contract of shipment, said petitioner was entitled to have said cattle delivered to him at his place of business in said City of Chicago upon the payment of

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

the proper charges for freight and switching then and theretofore fixed and determined by the published rates of these receivers for such transportation and for the switching and delivery of said live stock from the line of railroad operated by these receivers to the Union Stock Yards upon the line of railroad of the Union Stock Yards & Transit Company, which rates were provided for by the terms of such contract and were well known to the petitioner and to said consignors who entered into said contract, viz., 23½ cents per hundred weight for transportation to any point upon the line of the railroad operated by these receivers, and $2.00 per car additional for transferring and switching the same from its said line to the Union Stock Yards upon the line of railroad of said Union Stock Yard & Transit Company. But these defendants deny that the amount of freight for the transportation of said cars numbered 2,601 and 2,731 according to the terms of said contract was $103.40, and deny that the freight for the transportation of said cattle in said cars numbered 4,179 and 4,863, as charged by
77 the proper agents of these defendants and demanded of said petitioner, was or is the sum of $108.80; but on the contrary aver the truth to be that at the time said carloads of cattle were loaded, the weight of each carload was estimated to be 22,000 pounds, but that the actual weight of said live stock was not then accurately determined, neither was it then nor has it ever been usual or customary to fix the weight of live stock so transported, as the basis for the charges for such transportation at the point of shipment, but that the usual and uniform custom of the agents of these defendants then was and long prior thereto had been and still is to weigh such live stock when the same is delivered, and to base the charges for such transportation upon such actual weight, and that this custom then was well known to said consignors and to said petitoner, and that in pursuance of such custom said cattle were weighed in Chicago and the actual weight of the cattle contained in said cars was as follows, viz:

In car 2,731, 23,200 pounds; in car 2,601, 23,800 pounds; in car 4,863, 23,400 pounds; in car 4,129, 23,200 pounds, from which true weights the proper charge is to be computed at the rate of 23½ cents per hundred weight for transportation to Chicago upon the line of railroad operated by these defendants with the additional charge of $2.00 per car for the switching of the same from the tracks controlled and operated by these defendants to the Union Stock Yards upon the tracks of another railroad company, viz., the Union Stock Yard & Transit Company.

Answer to Petition of W. T. Keenan, filed Nov. 7,'94.

78 And these defendants further show that these rates are and were just and reasonable rates for the said services respectively; that they were duly published and filed with the Secretary of the Inter-State Commerce Commission on and before July 1, 1894, and that said shipments, and contracts of shipment, of each of said cars of live stock, were made in view and upon the basis, of said rates for transportation and for transfer and switching on the part of each of the parties to said shipments and contracts, including said petitioner, and that it was expressly provided in said live stock contract that the liability of the carrier should and when said cars or either of them passed from the track of said carrier to the tracks of any stock yards company. And these defendants further aver, that it was expressly understood by and between the agents of these defendants and said consignors and said petitioner that each of said cars of live stock was consigned to and was to be delivered to said petitioner at his place of business at the Union Stock Yards upon the tracks of the Union Stock Yard & Transit Company, and away from the line of the railroad operated by these defendants.

5. Further answering these defendants say, that said Atchison, Topeka & Santa Fe Railroad Company was organized as a common carrier, and that these defendants in the operation thereof at the time of said shipments were common carriers with the duties and responsibilities of such; and that upon the receipt of such shipments of cattle, it was their duty to transport the
79 same from Kansas City to the eastern terminus of its road at Chicago, but deny that they were bound to transport said cattle or any portion of them to any point beyond the line of said railroad, upon the railroad of any other common carrier or railroad company, without being entitled to receive and collect proper charges for such additional switching and transferring of freight.

6. Further answering these defendants deny, that said railroad company has never had or provided any platforms, chutes, yards, stations or cattle pens suitable for unloading, caring for and delivering cattle and other live stock consigned to said City of Chicago, or that these defendants have not any facilities belonging to said defendant for unloading and delivering live stock at the City of Chicago, but on the contrary they aver the truth to be that said railroad company upon its entrance into Chicago, about the year 1890, provided large and ample freight yards, freight houses, platforms and stations suitable and adequate for conveniently and safely handling and unloading, receiving and discharging all such

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

freight as would be likely to be committed to it for transportation from or to the City of Chicago; that such freight yards, platforms, buildings and station are located near the center of said City of Chicago, near State and Twelfth streets in said city, and have thus far proved ample and sufficient for the unloading and delivery of all freight, including live stock, consigned by shippers over said line of railroad to said City of Chicago for delivery at
80 the Chicago freight terminal of said road. They deny that said railroad company up to the appointment of these defendants as receivers and that since said time these defendants have always availed themselves of the facilities for receiving and delivering live stock from railroads which are furnished by said Union Stock Yard and Transit Company, except in the manner hereinafter stated; and they expressly deny that such facilities owned and operated by the said Union Stock Yard and Transit Company, have at any time been a part of the terminal facilities of said Atchison, Topeka & Santa Fe Railroad Company, or that the were at any time bound to furnish shippers over said railroad the facilities of such stock yards without expense to such shippers; but aver the truth to be that the facilities possessed and operated by said Union Stock Yard and Transit Company, were the exclusive property of that company and no part of the line or equipment or terminals at Chicago of said defendant railroad company.

7. Further answering, these defendants admit that the Union Stock Yard and Transit Company is a corporation organized under a special act of the Legislature of the State of Illinois, passed on February 13, 1865; with the powers in said petition alleged, together with certain other and further powers which are specifically named in sections 2 and 3 of said act, and which are as follows:

"Sec. 2. That said company shall have power to locate, con-
81 struct and maintain, upon the land purchased for such purpose, in convenient proximity to the southerly limits of the City of Chicago, and west of Wallace Street, as the same would be extended in a straight line south from said city limits, all the necessary yards, enclosures, buildings, structures, and railway lines, switches and turn-outs, aqueducts, for the reception, safe keeping, feeding and watering, and for the weighing, delivery and transfer of cattle and live stock of every description and also dead and undressed animals that may be at, or passing through or near the City of Chicago, and for the accommodation of the business of a general Union Stock Yard for cattle and live stock, including the

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

erection and establishment of one or more hotel buildings and the right to use the same, if deemed expedient, for the convenience of drovers, dealers and the public doing business at the said yards; and shall have power to repair, enlarge, relocate, reconstruct and alter the said yards, structures and buildings, or any of them, as shall become necessary or expedient from time to time; subject, nevertheless, to the restrictions above mentioned as to the location of the same; and shall have the right and power to make advances of money upon such cattle and live stock, for freight or other purposes, as may become expedient, and for such care, subsistence and handling, and advances made upon such stock, the said company may make and require to be paid, such reasonable charges as may be deemed just and proper and shall have the power to lease the public house or hotel building so erected for the accommodation of those drawn together by the business of such yards upon such terms and conditions as shall be deemed proper, or to make such other arrangements for the management thereof as may be deemed advisable, from time to time; and if the same shall be kept and managed by said company, shall have power to fix and require to be paid, such reasonable charges for the accommodation afforded by said house or houses as shall be just and proper.

Sec. 3. The said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect outside of the City of Chicago, the same with the tracks of all the railroads which terminate in Chicago, the lines of which enter the city on the south between the Lake Shore and the south west corner of said city, and on the west between said last named points and the north line of section number nineteen."

82 They aver that said company thereupon constructed said stock yards and all the buildings necessary therefor, together with a building for a hotel, and lines of railroad as in said Act provided, and that it has from time to time increased said tracks and stock yards facilities to meet the increased demands therefor. Further answering these defendants admit that ever since the construction of said yards and facilities as aforesaid and the connecting by said Union Stock Yard and Transit Company of said yards by its tracks of railway with the tracks of the various railroads entering the City of Chicago from the south and west sides thereof, said railroad companies last referred to, have as these defendants are informed and believe, delivered at said stock yards nearly, if not quite, all the live stock transported to Chicago over their said several lines;

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

but deny on information and belief that any live stock transported by any or either of said lines of railroad was at any time delivered by such railroad companies at such stock yards except upon the request and direction of the consignors or owners of such live stock, or that either of said lines has made said stock yards the depot or station of said line for any purpose whatever; but on the contrary these defendants aver on information and belief that the said Union Stock Yard and Transit Company has established upon its said property large meat packing and preserving factories near to said yards and all the facilities and conveniences for the proper receipt, handling and caring for of vast quantities of live stock daily, and a market for the purchase and sale of the same in large quantities together with the convenience of a large hotel, a bank for the transaction of all banking and exchange
83 business, and facilities for the receipt and sale of all supplies necessary in the operation of said stock yards and hotel; that said stock yards actually operated and controlled by said company have an area of about 400 acres and that there is established there a live stock exchange embracing in its membership of several hundred, all the persons engaged in the business of buying and selling live stock in the city of Chicago, and said company has constructed in connection with said stock yards for its uses and purposes, 246 miles of railroad track connecting different portions of said yards together and with the lines of the various railroads entering the city of Chicago; and that all of said facilities aforesaid, so provided by said Union Stock Yard and Transit Company and the property aforesaid, belong to and are operated and controlled by said Union Stock Yard and Transit Company for purposes of profit; and that said defendant railroad company and these defendants, as the receivers thereof, had and have no interest in or control over the same; that at the time aforesaid at which said Atchison, Topeka & Santa Fe Railroad Company extended its line of railroad into said city of Chicago, it found that Union Stock Yard and Transit Company already fully equipped with the facilities aforesaid and furnishing the shippers of live stock the advantages aforesaid, which could not be found elsewhere in or near the said city of Chicago, and many of which no common carrier was or is authorized by its charter to provide, or furnish to its shippers; and that by reason of such facilities the shippers over the line now controlled by these defendants, have always
84 consigned their shipments of live stock to persons engaged in the live stock business at said stock yards or have directed agents of said railroad company or of these defendants, receiving such shipments, to deliver them at said stock yards upon the line of

Answer to Petition of W. T. Keenan, filed Nov. 7,'94.

the railroad of said Union Stock Yard and Transit Company; and it then was and still is useless for said railroad company and for these defendants, as its receivers, to construct upon their said line of railroad in the City of Chicago, any expensive facilities for the receipt and delivery of live stock there, as no shipper of live stock over the line of said railroad has, in the past, requested, or will in the judgment of these defendants, in the future request or direct, the delivery of any considerable portion of live stock at any other point in the City of Chicago, except at said stock yards.

Further answering these defendants admit that said Union Stock Yard and Transit Company has not usually furnished and does not now usually furnish engines to draw cars containing live stock, from the tracks of the connecting railroads to its yards; and does now keep engines or cars for that particular purpose, but usually permits the several railroad companies to draw over its said tracks to its said yards, the cars of live stock brought to Chicago over the lines respectively of said roads.

But they deny on information and belief, that said Union Stock Yard and Transit Company has never furnished and does not
85 now furnish engines in any case for such service. They admit that the lines of said defendant railroad company are connected with the tracks of said Union Stock Yard and Transit Company, and that the point of said connection does not exceed ..... miles in distance from such yards. But they deny that said railroad company has availed itself of the facilities at said stock yards as a part of its line or as a part of its terminal facilities; but aver the truth to be that it has used its track connection with the tracks of said Union Stock Yard and Transit Company in the same manner as it has used its track connections with other railroad companies in the City of Chicago, in cases in which freight transported over the lines operated by these defendants was consigned to points on the line of such other railroad companies, in said City of Chicago.

These defendants admit that the said four cars of cattle were, upon their arrival at Chicago, transported from the tracks of said defendant company over the tracks of said Union Stock Yard and Transit Company, to said yards by the engines of said defendant railroad company and were unloaded there. But they deny that such transfer and unloading there was done without the directions, request or co-operation of said petitioner. But on the contrary they aver that said stock was transferred to and unloaded at said place

by the direction and co-operation of the consignors thereof, and by said petitioner, the consignee thereof, under the contract of shipment made at said Kansas City. Answer to Petition of W. T Keenan, filed Nov. 7,'94.

86 8. Further answering these defendants admit, that their agents refused upon the unloading of said cattle at the yards of said Union Stock Yard & Transit Company to permit the same to be delivered to the petitioner until he should pay the full amount of the lawful charges for the transportation, switching and transferring of said cars of live stock, and that they did demand the sum of $2 per car for the switching and transferring of said four cars from the said railroad of these defendants to said stock yards as they had lawful right to do.

9. Further answering these defendants deny, that the only reason for such charge of $2 per car is that since June 1, 1894, said Union Stock Yard & Transit Company has exacted and collected from them and from all other railroads similarly situated a trackage charge of 80 cents for the use of the tracks connecting such railroad with such stock yards. They admit that down to said June 1, 1894, said Union Stock Yard & Transit Company did not exact from any of the roads using said tracks such trackage charge of 80 cents per car or any other sum for cars containing live stock; and that neither said defendant railroad company nor these defendants nor any of the other railroads connecting with said stock yards, as these defendants are informed and believe, did before June 1, 1894 make any charge for transporting live stock from their respective lines to said stock yards.

87 But these defendants deny that said defendant railroad or these defendants as the receivers thereof did not claim the right to charge any additional sum for such transfer service, or that they did not in fact have such right as against any duty owed by said railroad or these defendants as a common carrier to shippers over said line of railroad. On the contrary, these defendants aver the truth to be that for many years prior to June 1, 1894, said Union Stock Yard & Transfer Company, in order to induce all shippers of live stock to consign such live stock to such stock yards at Chicago and to direct the various lines of railroad entering said Chicago to deliver all live stock carried by it to Chicago at said stock yards, gave to said railroads for the benefit of shippers consigning stock to said yards, the free use of all its said tracks; and the connecting railroad companies did the service of transfer and delivery from their respective tracks over the tracks of said Union Stock Yard & Tran-

Answer to Petition of W, T. Keenan. filed Nov. 7,'94.

sit Company to said stock yards without charge to such shippers. And such arrangement for the benefit of shippers and said Union Stock Yard & Transit Company, by which it was sought to increase the advantages of Chicago as a market for live stock, continued until some time in the month of May last, when said Union Stock Yard & Transit Company gave notice to these defendants and to other connecting lines of railroad, as these defendants are informed and believe, that after June 1, 1894, it would charge for the use of its tracks, rates varying from 80 cents to $1.50 for each car of live stock delivered at said yards, the charge for trackage from the line of said defendant's railroad being 80 cents; that during the long period of such arrangement the rates

88 for the transportation of live stock to Chicago from Kansas City have steadily declined until now they are barely sufficient to cover the actual cost of transportation, and are wholly insufficient to warrant these defendants in performing gratuitously the additional service of furnishing track connections belonging to the Union Stock Yards & Transit Company, and the transferring and switching of such cars of live stock from the line of said defendant railroad company to said stock yards; and thereafter in consideration of this additional expense of 80 cents per car for the use of such tracks, and of the cost of such service theretofore done gratuitously, these defendants gave notice, as above stated, that on and after June 1, 1894, they would make the charge of $2 per car for switching and transfer service, and published such notice and statement of charge as hereinbefore stated. That in order to transfer cars of live stock to such stock yards these defendants are required to take all cars of live stock, consigned or directed to be delivered at said yards, by switch engines from a point on the main line of their said railroad at Corwith, and haul them over six miles of switch track to connect with the tracks of said Union Stock Yards & Transit Company. That said Corwith is ten miles from the Chicago terminals of the line of said railroad at which all freight carried by said railroad to Chicago is delivered, unless otherwise ordered or directed, and that in order to make such

89 transfers of live stock from their said line of railroad to such stock yards, said defendant company was, and these defendants are required to provide switching engines and crews for that special purpose, and that the charge of $2 per car, including the said charge of 80 cents for truckage is a moderate and reasonable charge for the service rendered in such transfer, and the same has been uniformly charged and collected for such service since June 1, 1894.

10. Further answering these defendants say, that they have

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

no knowledge concerning the advice given the petitioner by his counsel, and have no information sufficient to form a belief thereabout, but are advised that such advice cannot be made a basis for the relief prayed by the petitioner in this proceeding.

Further answering these defendants say that they are ready and willing to furnish said City of Chicago any and all additional platforms, chutes, yards, stations and cattle pens suitable for unloading, caring for and delivering live stock in the City of Chicago as may be demanded by the shippers entrusting live stock for transportation over said line to said City of Chicago. But that so long as shippers continue to consign to persons at said yards all such live stock delivered to the railroad of said defendant company for transportation to Chicago and direct the delivery of the same to be made at the union stock yards of said Union Stock Yard & Transit Company upon the line of another railroad, or at any other point off of the line of said defendant company's railroad, the facilities now possessed and provided by these defendants are suitable and ample for all the needs of its business as a transporter of live stock.

And they deny the right of said petitioner or of any other
90 shipper by selecting, as the destination or place of delivery of live stock shipped over said railroad, of a place upon the line of another railroad company to compel the defendants to make delivery at such place without paying due compensation for the transfer of such live stock over the railroad of such other company.

And now, having fully answered all and singular the allegations and averments of said petition so far as the defendants are advised that they are relevant or material to be answered, without this, that any matter or thing in said petition charged and not herein specifically denied is true, and praying the same advantage hereby as though they had demurred to said petition, these defendants pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

ALDACE F. WALKER,
JOHN J. MCCOOK,
JOSEPH C. WILSON,
Receivers of Atchison, Topeka & Santa Fe Railroad Company.
By D. B. ROBINSON,
Their General Agent.

GEORGE R. PECK,
EDGAR A. BANCROFT,
JOHN G. EGAN,
Solicitors for said Receivers.

Answer to Petition of W. T. Keenan, filed Nov. 7, '94.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

D. B. Robinson, being first duly sworn on oath doth say, that
91 he is the agent of the Receivers of the Atchison, Topeka & Sante Fe Railroad Company, and authorized in this behalf; and that he has read the foregoing answer and knows the contents thereof, and that the statements therein are true, except such as are made upon information and belief, and those he believes to be true.

D. B. ROBINSON.

Subscribed and sworn to before me this 7th day of November, A. D. 1894.

EDGAR P. H. WEST,
Notary Public.

[NOTARIAL SEAL]

[Endorsed]: Filed Nov. 7, 1894.

S. W. BURNHAM,
Clerk.

Afterwards to-wit, on the eighth day of November, in the
92 adjourned October term of said court, 1894, in the record of proceedings thereof, in said entitled cause, before the Hon. Peter S. Grosscup, District Judge, appears the following entry to wit:

Union Trust Company of New York,
23,211. vs. } In Chancery.
Atchison, Topeka & Santa Fe Railroad Company.

Record Entry.

Leave is hereby granted to the solicitors of the receivers of the defendant company to amend their answer heretofore filed herein.

93 On the same day to-wit, the eighth day of November, 1894, came the receivers in said entitled cause and by leave of court first had and obtained file their Supplemental Answer, which said Supplemental Answer is in the words and figures following, to-wit:

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Union Trust Company of New York, Complainant, vs. Atchison, Topeka & Santa Fe Railroad Company, Defendant.	In Chancery. G. N. 23,211.
Union Trust Company of New York, Complainant, vs. Atchison, Topeka & Santa Fe Railroad Company, Defendant.	In Chancery. G. N. 23,276.
In re Wilson T. Keenan, vs. Aldace F. Walker, John J. McCook and Joseph C. Wilson, receivers of the Atchison, Topeka & Santa Fe Railroad Company.	Intervening Petition.

SUPPLEMENTAL ANSWER.

Supplemental Answer, filed Nov. 8, 1894.

And now come Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company, leave of court being first had and obtained for that purpose, and file this their supplemental answer in addi-
94 tion to, and in amendment of their answer heretofore on November 7, 1894, filed herein, that is to say:

Supplemental Answer, filed Nov. 8, 1894.

These defendants further answering show that since the filing of their answer herein, they have learned that certain of the statements contained in said original answer are erroneous; and they show that such errors arose out of the haste in which such answer was prepared and out of certain misunderstandings on the part of certain agents of said receivers in reporting to these defendants the facts relating to said shipments, that is to say:

The actual weight of the contents of said car numbered 4,129 given on page 6 in the second line of the last paragraph of said answer was 22,900 pounds instead of 23,200 pounds as there given.

Further answering, these defendants show that until after said answer was filed, they had been informed and had believed that the facts were as stated in paragraph numbered 8 on page 15 of their said answer; but that after the filing of such answer, they have learned from their agent having charge of their said freight business, transacted upon their said transfer track connecting with the tracks of the Union Stock Yard & Transit Company, that said four carloads of cattle were received at said stock yards and delivered to said Union Stock Yard & Transit Company at the times named in said answer, in the usual manner; and that upon the
95 presentation and demand of the said lawful charges for the transportation and transferring of said live stock as in said answer stated, upon the delivery of said live stock as aforesaid, all of said charges including said sum of $2.00 per car for the switching and transferring of said cars were paid to the agents of these defendants by said Union Stock Yard & Transit Company, and that since such time, these defendants have had no claim upon or control over said live stock or any portion thereof, nor have they since been held by said Union Stock Yard & Transit Company for these defendants or subject to their orders or directions; and that such delivery of said live stock to said Union Stock Yard & Transit Company, and such payment of charges of these defendants for said service by said Union Stock Yard & Transit Company was in accordance with the usual and uniform custom adopted and followed at all times by these defendants and by said defendant railroad company prior to the appointment of these defendants as its receivers, and, as these defendants are informed and believe, in accordance with the usual custom adopted and followed by all the railroad companies having track connections with said stock yards in the delivery of live stock directed to be delivered there, which custom is and has at all times been well known to and acquiesced in and approved by said petitioner.

Supplemental Answer, filed Nov. 8, 1894.

Further answering, these defendants aver that they are now and have been at all times since the unloading of said cattle, willing that they should be delivered to said petitioner; but they aver, upon information and belief, that said Union Stock Yard & Transit Company promptly notified said petitioner that it held such live stock for him and was ready to deliver the same to him upon the pay-
96 ment of the charges against it for the charges aforesaid, and that he thereupon refused to pay such charges to, or to accept such live stock from said Union Stock Yard & Transit Company.

Further answering, these defendants deny that said petitioner has paid to these defendants, or to their agents, or has tendered to them any sum or sums whatsoever for or on account of the charges for the transportation and transferring of said live stock, or for any portion thereof, since the same arrived at Chicago.

These affiants further state that all the statements contained in the answer originally filed were made in good faith, and that the errors herein above referred to resulted not from neglect but from a misunderstanding on the part of one of the agents of these defendants of the inquiries addressed to him concerning such shipment; and that such errors were not discovered or even suspected to exist until shortly after the filing of the answer aforesaid.

These defendants therefore pray that this supplemental answer may be considered as a part of said original answer, and that upon consideration of the foregoing, in addition to said answer, they may be hence dismissed by the order of this Honorable Court, as they have in their said original answer duly prayed.

ALDACE F. WALKER,
JOHN J. MCCOOK,
JOSEPH G. WILSON,
Receivers of Atchison, Topeka & Santa Fe Railroad Company.
By D. B. ROBINSON,
Their General Agent.

GEORGE R. PECK,
EDGAR A. BANCROFT,
JOHN G. EGAN,
Solrs. for said Receivers.

Supplemental Answer, filed Nov. 8, 1894.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

97 D. B. ROBINSON, being first duly sworn, on oath, doth say that he is the agent of the receivers of the Atchison, Topeka & Santa Fe Railroad Company, and authorized in this behalf; and that he has read the foregoing answer and knows the contents thereof, and that the statements therein are true, except such as are made upon information and belief, and those he believes to be true.

D. B. ROBINSON,

Subscribed and sworn to before me this 8th day of November, A. D. 1894.

EDGAR P. H. WEST,
Notary Public.

[SEAL]

[Endorsed]: Filed Nov. 8, 1894.

S. W. BURNHAM,
Clerk.

Afterwards to-wit, on the ninth day of November, 1894, came the Receivers in said entitled cause and filed in the Clerk's office of said Court, their Answer to the Petition of Doud and Keefer
98 and others, which said Answer is in the words and figures following to-wit:

Answer to Petition of Doud & Keefer, filed Nov. 9, '94.

UNITED STATES OF AMERICA, } ss
STATE OF ILLINOIS. }

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Union Trust Company of New York, Complainant,	
vs.	In Chancery.
Atchison, Topeka & Santa Fe Railroad Company.	G. N. 23,211.
Defendant.	

Answer to Petition of Doud & Keefer, filed Nov. 9, '94.

Union Trust Company of New York,
Complainant.
vs.
Atchison, Topeka & Santa Fe Railroad Company,
Defendant.
In Chancery,
G. N. 23,276.

In re, Doud & Keefer, W. L. Tamblyn, George W. Shannon, M. P. Buel, Simon O'Donnell, Rappal, Lamb & Co., Wood Bros., Campbell Commission Co., L. A McCoy, Brown, Beel & Ballinger, H. B. Steck & Co., Gregory & Hastings, Brown, St. John & Co., John S. Alexander & Co., John Adams & Sons, C. A. Mallory, Martin Bros., Chicago Live Stock Com. Co., Texas Live Stock Commission Co., Dailey, Taylor &. Co., W. H. Thompson, Jr., McCausland, Hoag & Co., Reynold, Westcott & Co., Conover & Herrick, Inguerson Bros. & Smith, Byers Moore &
99 Byers, C. L. Shattuck & Co., Wagner Bros. & Co., J. H. Wood, Martin, Horn & Younge, Dickson & Lott, Green, Mills & Co., Darlington, Quick & Boyden, P. Burns, Godair, Harding & Co.
vs.
Aldace F. Walker, John J. McCook, Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company.
Intervening Petition.

The answer of Aldace F. Walker, John J. McCook and Joseph C. Wilson, the Receivers of the Atchison Topeka & Santa Fe Railroad Company, to the petition of said Doud and Keefer and others, petitioners in said above entitled cause,

These defendants saving and reserving to themselves at all

Answer to Petition of Doud & Keefer, filed Nov. 9, '94.

times, all and every manner of benefit by objection or exception to the many uncertainties, errors and insufficiencies of said petition, and praying the same benefit hereby as though they had demurred to said petition for want of equity upon its face, for answer thereunto, answering say:

100 1. These defendants admit that said petitioners reside in and are citizens of the city of Chicago, and are and have been for some time past severally engaged in the business of buying and selling and shipping on commission, live stock at the Union stock yards in the city of Chicago, and that in the course of their business they have consigned to them from time to time live stock shipped from various points on the lines of and beyond the lines of said defendant railroad to said Chicago, and that such shipments in the aggregate are of the value of many thousand dollars.

2. These defendants admit that said defendant company and its receivers are and have been since the completion of its said defendant's railroad to the city of Chicago common carriers, charged with all the duties and responsibilities imposed by law upon such carriers; and that upon the acceptance by these defendants of live stock shipped to Chicago, it is the duty of these defendants to transport said cattle over the railroad of said defendant from the points of shipment to the terminus of said railroad at Chicago and to provide, furnish aud maintain reasonable and proper terminal facilities for the unloading and delivery of such property as may be entrusted to them for such transportation; but they deny that it was or is the duty of said railroad company or of these defendants to provide extensive cattle pens, cattle yards and station for the convenient and safe unloading and caring for of live stock upon its line in said city of Chicago any further than the conditions and amount of its live stock business demand.

101 3. These defendants deny that said defendant company has not since it began to operate its road into the City of Chicago, had or provided any platforms, yards, stations or chutes of its own suitable for unloading and delivering cattle and other live stock consigned to said City of Chicago; deny that said receivers have not now any such platforms, chutes, yards or stations belonging to said defendant, or that said defendant company and these defendants are wholly without such facilities belonging to said defendant for unloading and delivering live stock at the City of Chicago. But on the contrary they aver the truth to be, that said defendant company at the time of its entrance into Chicago acquired a large

Answer to Petition of Doud & Keefer, filed Nov. 9, '94.

quantity of land conveniently located in said city and constructed thereon at great expense buildings, platforms and other facilities for the unloading of all freight delivered to it for transportation to and delivery at the City of Chicago at the end of its line there, and that such freight yards and buildings are situated near the center of Chicago, near State and Twelfth streets in said city; they admit that the facilities there provided for the unloading and caring for live stock are not extensive, but aver that they are adequate and ample for the unloading and delivery of all live stock that has thus far been delivered to said defendant company and to these defendants for transportation to said City of Chicago to be delivered at the terminus of said line of road, and that in the judgment of these defendants such facilities are and will be adequate and ample for the unloading and delivery of all live stock that will in the future be delivered to said railroad
102 to be transported to said City of Chicago to be unloaded and delivered at any point upon the line of said railroad in said city.

These defendant deny that said defendant company up to the time of the appointment of said receivers, and that these defendants since that time have always availed themselves of the facilities for receiving and delivering live stock from railroads which are furnished by the Union Stock Yard & Transit Company, except as hereinafter stated.

4. These defendants admit that the Union Stock Yard & Transit Company is a corporation organized under a special act of the Legislature of the State of Illinois, passed on February 13, 1865, with the powers as in said petition alleged; and aver that said corporation was by said act given also further powers, all of which are set out in sections two and three of said act, to which reference is particulary had. That by said act said company was authorized not only to acquire ample land for the construction of stock yards, cattle pens and the building of railroad tracks appropriate and sufficient to connect said stock yards with all the railroads entering said City of Chicago from the west and from the south sides, but was also authorized to establish a hotel, to feed and care for all kinds of live stock and to charge reasonable compensation for the receipt and caring for such live stock, for the use of its said railroad tracks, for the keeping of persons at its said hotel and for the services of like nature rendered in connection with such stock yards; they admit that shortly after the or-
103 ganization of said company, it constructed at large expense, the structures and yards as in said petition alleged and con-

Answer of Petition of Doud & Keefer, filed Nov. 9, '94.

nected the same with said railroads and has thence hitherto maintained said yards, tracks and side tracks and from time to time increased such facilities.

These defendans further aver, that in addition to said facilities there have been established either by said company or by other companies in connection with said stock yards, large meat packing and preserving factories, with all the appropriate facilities and conveniences for the receipt, handling and caring for of vast quantities of live stock daily and a market for the purchase and sale of the same in large quantities; also a large hotel, upon the premises of said company; also a bank for the transaction of all banking and exchange business and ample facilities for the receipt and sale of all supplies needed in the operation of said stock yards and hotel; and that said stock yards actually operated and controlled by said company have an area of about 400 acres and that there is located there a live stock exchange or association embracing several hundred persons engaged in the business of buying and selling live stock in the City of Chicago, of which exchange as these defendants are informed and believe nearly if not all of said petitioners are members; and that said company has constructed in connection with said yards and for its said uses and purposes 246 miles of railroad track connecting the different portions of said yards together and with the lines of the various railroads entering the City of Chicago; and that all of said facilities, so provided
104 by or in connection with said Union Stock Yard & Transit Company at its said yards, and all of the property aforesaid, are operated and controlled by said Union Stock Yard & Transit Company or by other persons or corporations in connection therewith for purposes of profit; and that said defendant railroad company and these defendants as the receivers thereof have not and have not at any time had, any interest in or control over the same. And that when said defendant company about the year 1890, extended its line of railroad into Chicago, it found said stock yards fully equipped with the facilities aforesaid, and said Union Stock Yard & Transit Company furnishing the shippers of live stock the advantages aforesaid which advantages could not be found elsewhere in or near said City of Chicago, and many of which no common carrier was or is authorized by its charter to provide or furnish to its shippers or to any other persons.

Further answering these defendants aver, that by reason of such facilities, the shippers over the line now controlled by these defendants have always consigned their shipments of live stock to

persons engaged in the live stock business at said stock yards; or have directed the agents of said company or of these defendants receiving such shipments to deliver them at said stock yards which are situated upon the line of railroad of said Union Stock Yard & Transit Company; and this defendant neither has nor controls any line of railroad extending thereto; and they further aver upon information and belief, that there have not at any time been
105 any persons engaged in the live stock business doing business at any other place in Chicago except at said yards; and that for the reasons aforesaid, it has always been and still is useless for said railroad company and for these defendants as its receivers, to construct upon their said line of railroad in the City of Chicago any extensive facilities for the receipt and delivery of live stock there, as no shipper of live stock over the line of said railroad has in the past requested or will, in the judgment of these defendants, in the future request or direct the delivery of any considerable portion of live stock at any other point in the City of Chicago except at said stock yards; but these defendants deny that said company or these defendants have at any time delivered live stock at said stock yards except upon the request or direction or at the instance of the shippers, consignees or owners thereof, and upon information and belief they deny that said other railroad companies in said petition mentioned have used said stock yards as part of their terminal facilities or have delivered live stock there except at the request of owners thereof.

They deny that said railroad company or these defendants have made said stock yards the depot of said railroad or its station for the unloading and delivery of live stock brought to Chicago over its line; but on the contrary aver the truth to be that it has delivered live stock there because it was so consigned and has treated said line and railroad of said Union Stock Yard & Transit Company exactly as it has the railroad of every other company with which these defendant's railroad has track connections.

106 These defendants admit that the Union Stock Yard & Transit Company has not usually and does not now usually furnish engines to haul cars containing live stock from the lines of the several railroads to its yards, and that it keeps no engines or cars for that purpose, and that each railroad usually draws over its said tracks to said yards the cars of live stock brought to Chicago over its line; but deny that said company has no such engines or cars or never performs such service.

These defendants admit that when said line was extended to

Answer to Petition of Doud & Keefer, filed Nov. 9, '94.

Chicago, it connected said line with the tracks of said Union Stock Yard & Transit Company; and that the point of such connection is about one-half mile from the usual place of delivery of live stock at said yards; but deny that said defendant company before the appointment of said receivers, or that these defendants since said appointment have in any manner used said stock yard facilities as its station and depot for the unloading and delivery of cattle or other live stock; or that they have in any manner adopted or made said yards a part of its line in the City of Chicago.

They deny that cars of live stock carried over the line of railroad operated by these receivers, are upon their arrival at Chicago transported to the tracks of said Union Stock Yard & Transit Company and unloaded at said yards without any request or direction from the shippers or owners thereof; but on the contrary they aver the truth to be that when a consignment of live stock is made to said petitioners or to either of them, the very act of consigning to them is a direction to the carrier to deliver such live stock at the place of business of such petitioners which is and long has been and is well known to all shippers and common carriers having dealings therewith to be at said Union Stock Yards.

107

5. These defendants admit that since June 1, 1894, they have claimed the right to demand from all persons for whom they should transport live stock from points on said line of railroad to said stock yards the sum of $2.00 per car for the switching and transferring of such cars of live stock from the track and line of said defendant railroad company to said stock yards upon the line of said Union Stock Yard & Transit Company.

And they further aver, that such charge is a just and reasonable charge for the service so rendered including as it does the use of the track of said Union Stock Yard & Transit Company for which these defendants are required to pay the sum of 80 cents for each car so transferred, and that said charge of $2.00 per car has been uniformly charged and collected for such service ever since June 1, 1894.

6. Further answering these defendants deny that the only reason for such charge of $2.00 per car is that since June 1, 1894, said Union Stock Yard & Transit Company has exacted and collected from them and from all other railroads similarly situated a trackage charge of 80 cents for the use of the tracks connecting such railroad with such stock yards. They admit that down to

said June 1, 1894, said Union Stock Yard & Transit Company did not exact from any of the roads using said tracks such
108 trackage charge of 80 cents per car or any other sum for cars containing live stock; and that neither said defendant railroad company nor these defendants nor any of the other railroads connecting with said stock yards, as these defendants are informed and believe, did before June 1, 1894, make any charge for transporting said live stock from their respective lines to said stock yards.

But these defendants deny that said defendant railroad or these defendants as the receivers thereof did not claim the right to charge any additional sum for such transfer services, or that they did not in fact have such right as against any duty owed by said railroad or these defendants as a common carrier to shippers over said line of railroad. On the contrary, these defendants aver the truth to be that for many years prior to June 1, 1894, said Union Stock Yard & Transfer Company, in order to induce all shippers of live stock to consign such live stock to such stock yards at Chicago and to direct the various lines of railroad entering said Chicago to deliver all live stock carried by it to Chicago at said stock yards, gave to said railroads, for the benefit of shippers consigning stock to said yards, the free use of all its tracks; and the connecting railroad companies did the services of transfer and delivery from their respective tracks over the tracks of the Union Stock Yard & Transit Company to said stock yards without charge to said shippers. And such arrangement for the benefit of shippers and said Union Stock Yard & Transit Company, by which it was sought to increase the advantages of Chicago as a market for
109 live stock, continued until some time in the month of May last, when said Union Stock Yard & Transit Company gave notice to these defendants and to other connecting lines of railroad, as these defendants are informed and believe, that after June 1, 1894, it would charge for the use of its tracks, rates varying from 80 to $1.50 for each car of live stock delivered at said yards, the charge for trackage from the line of said defendant's railroad being 80 cents; that during the long period of such arrangement the rates for the transportation of live stock to Chicago from Kansas City have steadily declined until now they are barely sufficient to cover the actual cost of transportation; and are wholly insufficient to warrant these defendants in performing gratuitously the additional service of furnishing track connections belonging to the Union Stock Yard & Transit Company and the transferring and switching of such cars of live stock from the line of said de-

Answer to Petition of Doud & Keefer, filed Nov. 9, 94.

fendant railroad company to said stock yards; and thereafter in consideration of this additional expense of 80 cents per car for the use of such tracks, and of the cost of such service theretofore done gratuitously, these defendants gave notice as above stated that on and after June 1, 1894, they would make the charge of $2. per car for switching and transfer service and published such notice and statement of charge at the office of the company and filed a schedule or tariff of such charge for such service with the Secretary of the Inter-State Commerce Commission prior to said June 1, 1894, as required by law. That in order to transfer cars of
110 live stock to such stock yards these defendants are required to take all cars of live stock, consigned or directed to be delivered at said yards, by switch engines from a point on the main line of their said railroad at Corwith, and haul them over six miles of switch track to connect with the tracks of said Union Stock Yard & Transit Company; that said Corwith is 10 miles from the Chicago terminals of the line of said railroad at which all freight carried by said railroad to Chicago is delivered unless otherwise ordered or directed; and that in order to make such transfers of live stock from their said line of railroad to such stock yards, said defendant was and these defendants are, required to provide switching engines and crews for that special purpose; and that the charge of $2.00 per car, including the said charge of 80 cents for trackage, is a moderate and reasonable charge for the service rendered in such transfer, and the same has been uniformly charged and collected for such service since said June 1, 1894.

7. Further answering these defendants aver, that they have no knowledge concerning the advice given to the petitioners by their counsel and have no information concerning the same sufficient to form a belief, but that they are advised that such advice cannot be made a basis for the relief prayed for in said petition.

8. Further answering, these defendants admit that there are
111 stock yards located at the Cities of Omaha, Nebraska, Kansas City, Missouri and East St. Louis, Illinois, and that large shipments of live stock are received there and that there are persons engaged in the commission business at such places actively competing with your petitioners to obtain consignments to said respective stock yards.

They aver that they have no information or knowledge as to the equipments and facilities of the various railroads entering said cities except as to the facilities of the railroad operated by these

Answer to Petition of Doud & Keefer, filed Nov. 9 '94.

defendants at Kansas City and as to it, they aver that it has freight yards, station, platforms and the like at Kansas City adequate for the receipt and delivery of such live stock as is brought to or directed to be delivered from any suitable point upon said line in said Kansas City.

They admit that extensive and special facilities for that purpose are furnished by stock yard companies at said respective cities; but they deny that said defendant company has availed itself of such facilities at Kansas City, as a part of its line or of its terminal facilities, or in any other or different way than it has used its track connections with other railroads in said Kansas City for the transfer of freight carried by it destined to points on such other lines of railroad in said Kansas City.

Further answering, these defendants admit that they do not make any switching charge at Kansas City for transfer of live stock consigned to them for said stock yards, because under
112 the arrangement between said railroad company and said stock yards, said stock yards furnish such track connections without charge to these defendants and the conditions of transferring there are dissimilar from the conditions in the City of Chicago. That as to the custom of the several railroads connecting with the stock yards at East St. Louis, these defendants neither admit nor deny the averments of said petition but ask strict proof thereof; and they aver on information and belief that there is a charge of $1.00 per car charged and collected for the transfer of all cars of live stock from the different railroads to the stock yards at said City of Omaha; that these defendants have no line of railroad at either of said cities, of East St. Louis and Omaha.

Further answering, these defendants aver that there are four other lines of railroad competing with the line of these defendant's extending from Kansas City to Chicago and that neither of said lines of railroad nor any other line entering said Kansas City, as these defendants are informed and believe, makes any charge for the transferring of its cars loaded with live stock to the stock yards at Kansas City; and that all of said four lines competitors aforesaid and of other lines of railroad entering the City of Chicago and having track connections with said stock yards make and have made since June 1, 1894, and have collected uniformly said charge of $2.00 per car for live stock received by them and transferred to said stock yards; and that such charge is based upon the dissimilar and unequal conditions existing in the matter of the

Answer to Petition of Doud & Keefer filed Nov. 9, '94.

transfer of live stock from the different lines of railroad to said stock yards at Chicago and the conditions of like service at said Kansas City, and that if these defendants are not permitted to
113 charge for such tranfer service, it will compel them to render gratuitously the service of transferring such cars of live stock to the connecting line and in addition to pay for the use of the track of such connecting line 80 cents per car, and will thereby very seriously reduce the revenues derived by these defendants from such live stock business, which revenues are already so low as to barely pay the fair costs of the same.

9. Further answering, these defendants deny that upon shipments of live stock over the lines of road controlled by them, or as these defendants are informed and believe, upon other roads from western points through Chicago to eastern points that such cars are transefrred to said stock yards without any charge being made therefor; but on the contrary they aver the truth to be that in all such through shipments, the rate from the terminals of origin to the destination is fixed and that these defendants receive for their service, which embraces only the transfer of said cars of live stock over the railroad of said defendant company, their fixed share of such rate; and that these defendants do not in such case deliver such cars to the Union Stock Yard & Transit Company, but always to the connecting carrier that is to transport such live stock eastward from the City of Chicago; and they aver upon information and belief that this is likewise true in the case of through shipments over other railroads entering Chicago from the west.

Further answering these defendants say that they are ready
114 and willing to furnish at said city of Chicago any and all additional platforms, chutes, yards, stations and cattle pens suitable for unloading, caring for and delivering live stock in the city of Chicago as may be demanded by the shippers entrusting live stock for transportation over said line to said city of Chicago. But that so long as shippers continue to consign to persons at said yards live stock delivered to the railroad of said defendant company for transportation to Chicago, and direct the delivery of the same to be made at the union stock yards of said Union Stock Yard & Transit Company upon the line of another railroad, or at any other point off the line of said defendant company's railroad, the facilities now possessed and provided by these defendants are suitable and ample for all the needs of its business as a transporter of live stock.

And they deny the right of said petitioners or of any other

shippers by selecting, as the destination or place of delivery of live stock shipped over said railroad, of a place upon the line of another railroad company to compel the defendants to make delivery at such place without paying due compensation for the transfer of such live stock over the railroad of such other company.

And now having fully answered all and singular the allegations and averments of said petition so far as the defendants are advised that they are relevant or material to be answered, without this, that any matter or thing in said petition charged and not
115 herein specifically denied is true, and praying the same advantage hereby as though they had demurred to said petition, these defendants pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

ALDACE F. WALKER,
JOHN J. MCCOOK,
JOSEPH C. WILSON,
Receivers of Atchison, Topeka & Santa Fe Railroad Company.
By D. B. ROBINSON,
Their General Agent.

GEORGE R. PECK,
EDGAR A. BANCROFT,
JOHN G. EGAN,
Solicitors for said Receivers.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

D. B. Robinson, being first duly sworn on oath doth say that he is the agent of the Receivers of the Atchison, Topeka & Santa Fe Railroad Company, and authorized in this behalf; and that he has read the foregoing answer and knows the contents thereof, and that the statements therein are true, except such as are made upon information and belief, and those he believes to be true.

D. B. ROBINSON.

Subscribed and sworn to before me this 9th day of November, A. D. 1894.

[Endorsed]: Filed Nov. 9, 1894.

S. W. BURNHAM,
Clerk.

EDGAR P. H. WEST,
Notary Public.
[SEAL]

118 Afterwards to-wit. on the 26th day of November, 1894, there was filed in said Clerk's office the opinion of Judge Grosscup in said entitled cause, which said opinion is in the words and figures following, to-wit:

Union Trust Company of New York
vs.
The Atchison, Topeka & Santa Fe Railroad Company.

Decision of JUDGE GROSSCUP, November 26, 1894.

Opinion, filed Nov. 26, 1894.

The petition of Wilson T. Keenan and the subsequent petition of Dowd & Keefer and others, with the answers of the railroad company thereto, raised the question of the legality of certain so-called terminal charges demanded by the defendant.

The petitioners are commission merchants at the Union Stock Yards and Transit Company's yards, and have been engaged for many years in receiving consignments of cattle from the west and southwest. The railroad company is a common carrier engaged among other things in transporting live stock from Kansas City and other points to Chicago. In association with other railroad companies the defendant had, until June, 1894, been delivering to the Stock Yards at a single freight rate its live stock cars. The Stock Yards are not on the line of its track, but are only reached over a line owned by the Union Stock Yards & Transit Company. Until June last no charge was imposed upon the railway by the Stock Yards Company for the use of its tracks, but since that date a charge of
119 forty cents a car each way has been demanded and collected. To meet these expenses and the additional cost and labor of transporting the cars from its own line over that of the Stock Yards Company into the yard, the defendant road along with other railways entering into Chicago, in June last issued a circular letter adding to the freight rate from Kansas City to Chicago of twenty-three and one-half cents a hundred then in force, an additional charge of two dollars per car as a terminal charge, and since that date the defendant road has been demanding and receiving this additional charge. The petitioners, Dowd, Keefer and others, chal-

Opinion, filed Nov. 26, 1894.

lenge the legality of this charge, and ask the court to instruct the receivers to discontinue it for the future. The petition of Keenan shows the shipment from Kansas City by his consignor of four cars of live stock to the railway company's Chicago station, for which all the charges have been paid except these terminal charges of two dollars per car, and ask the court to instruct the receiver to deliver to the petitioner the cattle shipped in these cars, notwithstanding his refusal to pay these terminal charges. Both the petions, however, in the end turn upon the legality or illegality of the so-called terminal charge.

The railroad company has at 12th street yard, room enough to establish a delivery station and some facilities in that direction, but it was not claimed upon the hearing that these yards had been for many years used for such purposes, or that they could be now used until additions and modifications were made.

120 The specific question raised is this: Is the railway company on its freight rate of twenty-three and one-half cents per hundred required to transport the live stock delivered to it at Kansas City to the stock yards without further charge? The question is not one of contract between the petitioner and the railway company, but it is a question of right between it and the public. The defendant is a common carrier, and the petitioners are entitled to the same rate that the public can demand. Their particular contract or special knowledge therefore is inconsequential, for common carriers are required to serve all alike, and may not exact even by contract from one what it cannot rightfully impose upon all. It is a servant of the public, entitled to charge for its services what the law permits, but not allowed to discriminate between shippers, and that, too, irrespective of whether such discrimination is the result of oppression and duress, or of voluntary contract. Stability of business conditions and fairness in business competition require that each man's expense at the hands of the carrier shall be the same as that accorded to all others; no more and no less. And the law will not permit that such equality should ever be disregarded by the carrier, or voluntarily waived by the shipper.

121 What charge, then, can the defendant company lawfully impose upon the general public for the trnsportation of live stock from Kansas City to the stock yards in Chicago? The duty of the carrier is to furnish facilities for loading, carrying and unloading. Its custody of the stock remains and its obligation is not discharged until the shipper is furnished with proper facilities of unloading. The carriage includes the delivery, and there can be

Opinion, filed Nov. 26, 1894.

no delivery except at such a place as is suitable to the delivery of the particular thing carried. The delivery of live stock in the company's passenger station or freight platforms unattended with suitable chutes, yards, etc., would be no delivery at all. It is the duty of the carrier, therefore, as said in the Covington Stock Yards case, 139 U. S., to furnish these facilities to the shipper.

The freight demanded covers the entire service of the carrier from depot to depot. It is in law the compensation not only for the actual carriage but also for the facilities furnished for loading and unloading. The service is a single one, and the compensation is likewise single. The law will not permit the charge for such single service to be divided. A carrier cannot make up its bill of charges in items, one for loading, one for carriage, one for personal service of attendants, and one for delivery, etc. The freight is not an aggregate of separate charges, but a single charge. This policy of the law is not because a particular shipper might not
122 deal with the carrier as intelligently in the case of one method as in the other, but because the public is not so likely to deal intelligently with a series of items as with a single freight rate. The shipper may be intelligent or unintelligent, ignorant or educated, accustomed to business or inexperienced in such affairs, deliberate and careful, or hasty or uninquiring; the service of the carrier is for one as well as the other. A single charge presents to him at once the whole problem. A series of charges might confuse him and leave uncertain what in the end the aggregate would be. For illustration, many roads centering in Chicago reach their passenger stations over other lines. Would it be tolerable to permit them to sell tickets from New York or Louisville to Chicago at a single rate, and then impose a further terminal charge at this end of the line? Would such practice be made less intolerable by the fact that the company actually carried the passenger on its own line within the corporate limits, thus fulfilling the letter of the contract, or by the fact that the additional terminal charge was posted along with other rates in the station of departure? The practical objection is that the public generally know or ascertain the locality of the company's station within the city of destination, but in few instances consult the posted passenger rates. If the public did consult the posted rates, it would only be confused by a method other than that of a single rate; for travellers do not
123 usually carry pencils and tabs, and the majority would be unable to figure out satisfactorily the results of tabulated statements. The law comes to their rescue by requiring the carrier to name under a single and definite item the cost of its entire under-

taking from station to station. It may be admitted that the reasons for a single charge in the case of freight traffic are not so cogent as in that of the carriage of passengers, but they are of the same character and are calculated to safe-guard the public against miscalculations and mistakes. Any other rule would expose those who are entitled to the service of the carrier to hardships and injustice that can easily be avoided, and would open up opportunities to dishonest or tricky carriers that should not be tolerated. Opinion, filed Nov. 26, 1894.

The duty of the defendant company in this case, therefore, is to carry the live stock offered to it at Kansas City to its station of delivery at Chicago at a single charge, without the imposition of other charges under any name or pretext. This does not exclude additional charges for service beyond the defendant's undertaking, or change the obligation of defendant with respect to goods or stock accepted for delivery at its Chicago station when delivery is made or offered to be made at that station. It sometimes happens that a further service is required. The shipper may not wish his goods delivered at the station, but at some other point in the
124 city reached perhaps over another railroad's tracks, or by some other method of transportation. A terminal charge for this service is proper, because it is not included in the carrier's undertaking as held out to the public generally, and because such additional service to a special shipper without charge would be unfair to his competitors. In such cases the law permits, and the Inter State Commerce Act especially recognizes the right of the terminal charge. The only limitations are that the additional charge be reasonable, and that the amount be announced in advance, so that the particular shipper wishing the additional service may be advised of the amount of his increased obligation. The inquiry then resolves itself to this: Do the chutes and sheds at the stock yards constitute the defendant's Chicago station for the delivery of live stock, or are they at a point beyond or different from the station? If the former, a terminal charge cannot be imposed. If the latter, it may. The fact that the defendant may have some place on its line of road in Chicago where stock could be delivered, is not absolutely controlling. The construction and the maintenance of yards not in use, would not necessarily establish the locality of the station. The question is practical, not technical, and is to be solved not so much by what the carrier might pretend to do as by what it actually does. The attention of the public is arrested by actualities, and its understanding of the carrier's undertaking is de-
125 rived from what the carrier commonly does. To circumvent that understanding by a pretence of maintaining yards where

Opinion, filed Nov. 26, 1894.

they are not used, might be worse than wholly disregarding the law itself, for the rule of law requiring a single charge from the point of acceptance to the point of delivery, has no reason for existence save that the reasonable understanding of the public may not be disappointed.

Neither is it a sufficient answer that the practice of the company in this case does not differ from that of carriers where terminal charges are allowed, except that in respect of live stock the deliveries of this company to a point off its line are universal, while in the case where terminal charges are allowed, such deliveries are only special and occasional. The universality of delivery at a certain place, or something approaching that, may be the very thing that constitutes that place, the company's depot. If the practice of the carrier is of such a character that the public is reasonably led to understand a certain place to be the company's depot, the carrier should be held to that understanding. Terminal charges are allowed in particular cases where the delivery is to be somewhere else than at the carrier's depot, but that does not allow the carrier to establish its depot at some place off the line and then add terminal charges. Where then, in contemplation of law, is the defendant's station for the delivery of live stock in Chicago?

The petitions and the answer and the admissions at the hearing,
126 leave me in little doubt that it is and has been for a long time at the stock yards. At no other place have car loads of stock, so far as I am advised, been delivered or unloaded for years. At no other place in Chicago could the company accomplish the delivery of the live stock that comes over its line, except by expensive creation of facilities. There has been nothing in the carrier's practice upon which the shipper at Kansas City could form a belief that the cars would go anywhere else in Chicago than to the stock yards.

Lay aside, for illustration, any consideration of rate, and view this case as if it turned upon the right of the shipper to have his live stock delivered at the stock yards and nowhere else, what would be his right in that respect on the facts disclosed? He certainly had a right to deliver it at some particular place in the city. Chicago covers a large area, and it cannot be within the power of the carrier to discharge the car anywhere within the city limits. The right of delivery at a fixed depot—the depot in contemplation at the time of shipment—is as much a right under the conditions that prevail in this city as the right of delivery within the city limits at all. An unloading at 12th street might be as great an injustice, in view of the shipper's reason-

able understanding, as an unloading 25 miles in the country. At what depot, then, can he insist upon a delivery? Certainly, in my judgment, at that place the carrier has held out as the depot. Now, why is that true? Not because the carrier has expressly so agreed. The contract makes no mention
127 of any place except the Chicago station. It is simply because the law by implication makes that a term of the understanding, which the conduct of the parties reasonably imports into it. If such practice makes the stock yards the depot of the company for the purpose of fixing the right of the parties in respect of the locality of delivery, is there any reason why it may not likewise make it the depot for the purpose of ascertaining the legality of the rates? If it is the actual depot in view of which all shipments are made it is also the local depot in view of which all rates must be adjusted. To say that contrary to the prevailing practice the company could deliver anywhere it pleased, except upon special arrangement, would be to deny the plainest implication of the law. To admit that the delivery, except in specially understood cases, must be at some fixed place, but deny that such place was the depot of the company for such, would amount to saying that the company's obligation was to deliver at some place other than its depot. I am impressed with the belief that the practice of the defendant has made the stock yards its depot for the delivery of live stock. The fact may, on further proof and consideration, be seen to be otherwise; but I am convinced I should enter an order in consonance with present impressions. The court cannot suffer its receiver to impose doubtful charges.

Opinion, filed Nov. 26, 1894.

An order will accordingly be entered requiring the receiver to
128 deliver to Keenan the four cars of stock in question without the payment of further charges, and also instructing the receiver until the further order of this court to discontinue the levying of the additional terminal charge upon live stock between Kansas City and Chicago. Nothing in this order, of course, will prevent the defendant company from changing its freight rates between these two points, or from establishing in good faith any depot in Chicago other than at the stock yards for the delivery of live stock, provided such a change would be good business policy.

GREEN AND ROBBINS,
Solicitors for W. P. Keenan.

[Endorsed]: Filed Nov. 26, 1894.

S. W. BURNHAM,
Clerk.

Afterwards to-wit, on the twenty eighth day of June, in the
136 adjourned May term of said court, 1895, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Gosscup, District Judge, appears the following entry to-wit.

Union Trust Company of New York,
137 23,211.
vs.
Atchison, Topeka & Santa Fe Railroad Company.
} In Chancery.

In re. Wilson T. Keenan,
vs.
Aldace F. Walker, John J. Mc Cook, and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company.
} Intervening Petition.

In re. Doud & Keefer,
vs.
Aldace F. Walker John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeks & Santa Fe Railroad Company.
} Intervening Petition.

Record Entry.

And now come the parties to the above entitled proceedings upon intervening petitions in said cause by their respective counsel, and it appearing to the court that without the fault of either party, said defendants have been unable to perfect the appeal heretofore granted them herein, and it appearing further to the Court that the order entered on December 14, 1894, granting to said defendants an appeal from the order of the court, entered November 26, A. D. 1894, should be set aside, the parties by their counsel agreeing thereto.

It is hereby ordered that said order of December 14, 1894, allowing said appeal be and the same is hereby set aside, and the said application for such appeal is hereby continued to the next term of this court.

Afterwards to wit, on the first day of July in the July term of
139 said court 1895, in the record of the proceedings thereof in said entitled cause, before Hon. Peter S. Grosscup, District Judge, appear the following two orders.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR SAID DISTRICT AND DIVISION.

Union Trust Company of New York,
Complainant,
140 vs.
Atchison, Topeka & Santa Fe
Railroad Company,
Defendant.
In Chancery.
G. N. 23,211.
G. N. 23,276.

In re. Wilson T. Keenan,
Complainant,
vs.
Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company,
Defendants.
Intervening Petition.

In re. Doud & Keefer, et al.,
Complainants,
vs.
Adlace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company,
Defendants.
Intervening Petition.

This day come the parties to the above entitled proceedings upon the intervening petitions of Wilson T. Keenan and of Doud & Keefer and others, by their respective counsel, and the court of its own motion, the parties by their respective counsel consenting thereto, doth order that the order and decree heretofore
141 entered herein on November 26, 1894, be and the same is hereby set aside and annulled. Record Entry.

Entered July 1, 1895.

In the matter of the petition of Wilson T. Keenan, and of the petition of Doud & Keefer, et al.,
vs.
Receivers of Atchison, Topeka & Santa Fe Railroad Company.

Record Entry.

These causes coming on for hearing upon the petition of Wilson T. Keenan filed herein November 2, 1894, and the answer and supplemental answer of the receivers thereto, and the petition of Doud & Keefer and others, filed herein November 3, 1894, and the answer of the receivers to said petition and the admissions in open court of counsel herein and the court having heard the arguments of counsel and being fully advised, the court doth find, that the Chicago station of the defendant railroad company and its receivers for the delivery of live stock heretofore has been and now is the Union Stock Yards in said city of Chicago; that the imposition of a terminal charge, in addition to the freight rate, for delivery of live stock at said Chicago station, is illegal; therefore,

It is ordered: That the receivers herein forthwith deliver to said Wilson T. Keenan, the said four carloads of live stock mentioned in his said petition, upon his payment to said receivers or their agents of the sums averred in said petition to have been tendered to the agents of said receivers, and without exacting
142 from said Keenan, the said terminal charge of two dollars per car,

And it is further ordered: That the said receivers, until the further order of this Court, discontinue the charging of any terminal charge upon any live stock shipped over the line of said defendant to said Chicago in addition to the freight between said point of shipment and said Chicago; and that the said receivers do henceforth, until the further order of this Court, deliver all live stock consigned over said line of railroad to said Chicago at the the Union Stock Yards in said City of Chicago, without exacting any terminal charge for delivery of same at said Union Stock Yards in addition to said freight rate.

But nothing in this order shall be construed to interfere with the right of said receivers of said defendant to change its freight rates or from establishing in good faith any depot in Chicago other than at said Union Stock Yards for the delivery of live stock.

Entered July 1, 1895.

On the same day to-wit: On the first day of July 1895, came the Receivers in said entitled cause and filed in said clerk's office their Petition for appeal and assignment of errors in said entitled cause, which said Petition and assignment of errors are in
143 the words and figures following to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR SAID DISTRICT AND DIVISION.

Union Trust Company of New York,
Complainant.
vs.
Atchison, Topeka & Santa Fe Railroad Company,
Defendant.
} In Chancery. G. N., 23,211. G. N., 23,276.

In re Wilson T. Keenan,
Complainant.
vs.
Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company,
Defendants.
} Intervening Petition.

In re Doud & Keefer, et al
Complainants.
vs.
Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company,
Defendants.
} Intervening Petition.

To the Honorable Peter S. Grosscup, Presiding Judge of said Court:

Petition for Appeal and Assignment of Errors, filed July 1, 1895.

Now come Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company, the defendants in the above entitled Intervening Petitions filed in the above entitled suit and pray the court for per-

Petition for Appeal and Assignment of Errors, filed July 1, 1895.

mission to prosecute an appeal to the United States Circuit Court of Appeals in and for the Seventh Circuit, from the final order heretofore entered herein on July 1, A. D., 1895, at the present term of this Court.

And said defendants, the permission of said Court being first
144 had and obtained, do further pray the Court to grant to them an appeal from the order heretofore entered in the proceedings had upon said above entitled intervening petition, on November 26, 1894, to the United States Circuit Court of Appeals in and for the Seventh Circuit, and that such appeal may be allowed without bond.

ALDACE F. WALKER,
JOHN J. McCOOK,
JOSEPH C. WILSON,
Receivers of Atchison, Topeka & Santa Fe Railroad Company,
By EDGAR A. BANCROFT,
Their Solicitor.

EDGAR A. BANCROFT,
ELDON J. CASSODAY,
Solicitors for said defendants.

UNITED STATES OF AMERICA,
145 NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR SAID DISTRICT AND DIVISION.

Union Trust Company of New York, Complainant,
vs.
Atchison, Topeka & Santa Fe Railroad Company, Defendant.
} In Chancery. G. N. 23,211. G. N. 23,276.

In re Wilson T. Keenan, Complainant,
vs.
Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company, Defendants.
} Intervening Petition.

Petition for Appeal and Assignment of Errors, filed July 1, 1895.

In re Doud & Keefer et al., Complainants,
vs.
Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company, Defendants.
} Intervening Petition.

And the said receivers, Aldace F. Waller, John J. McCook and Joseph C. Wilson, defendants in the above entitled intervening petition, filed with their said petition for appeal these assign-
146 ments of error and say that in said proceedings manifest error hath intervened to the prejudice of these defendants by reason of which the said order and decree of July 1st, 1895, should be reversed and annulled, viz.:

First. Said Circuit Court erred in finding that the Chicago station of said defendant railroad company and of its receivers for the delivery of live stock had theretofore been the Union Stock Yards in said city of Chicago.

Second. Said Circuit Court erred in finding that the Chicago station of said defendant railroad company and of said receivers for the delivery of live stock was at the time of the entering of said decree the Union Stock Yards in said city of Chicago.

Third. Said Circuit Court erred in finding that the imposition by said receivers of a terminal charge in addition to the freight rate for the delivery of live stock at said Union stock yards was illegal.

Fourth. Said Circuit Court erred in entering said order whereby said receivers were ordered to deliver to said petitioner, Wilson T. Keenan, the said four car loads of live stock mentioned in his petition without exacting from said Keenan the payment
147 of a terminal or switching charge of $2 per car.

Fifth. Said Circuit Court erred in ordering said receivers in said decree to cease charging any terminal or switching charge for transferring to the Union Stock Yards upon any live stock shipped over the line of said defendant to said Chicago in addition to the freight charge between said point of shipment and said Chicago.

Petition for Appeal and Assignment of Errors, filed July 1, 1895.

Sixth. Said Circuit Court erred in ordering said receivers to deliver at the Union Stock Yards in said city of Chicago all live stock consigned over said line of railroad to Chicago without exacting any additional charge for delivering the same at said Union Stock Yards.

Seventh. Said Circuit Court erred in entering said order and decree, or in entering any portion thereof upon the case then presented.

Eighth. Said Circuit Court erred in making any final order upon said intervening petitions or upon either of them.

EDGAR A. BANCROFT,
Solicitor for Defendants,
Receivers A., T. & S. F. R. R. Co.

[Endorsed]: Filed Jul. 1, 1895.

S. W. BURNHAM,
Clerk.

On the same day to-wit: the first day of July, in the July term
148 of said court, 1895, in the record of proceedings thereof, in said entitled cause, before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to-wit:

Union Trust Company of New York, vs. Atchison, Topeka & Santa Fe Railroad Company.	In Chancery.
In re Wilson T. Keenan, vs. Aldace F. Walker, John T. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company.	Intervening Petition.
In re Doud & Keefer, et al, vs. Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of Atchison, Topeka & Santa Fe Railroad Company.	Intervening Petition.

Record Entry.

And now this cause coming on to be heard upon the prayer of the defendants, Aldace F. Walker, John J. McCook and Joseph C. Wilson, the receivers of the Atchison, Topeka & Santa Fe Railroad Company, for leave to prosecute an appeal from the order heretofore entered herein to the United States Circuit Court
149 of Appeals in and for the Seventh Circuit, and upon the prayer of said defendants for an appeal from said order to said United States Circuit Court of Appeals.

The court doth hereby grant the said defendants permission to prosecute such appeal and doth hereby grant an appeal from said order entered herein on July 1st, 1895, to the United States Circuit Court of Appeals in and for the Seventh Circuit, without bond, but upon condition that such appeal shall not operate as, or be made a supersedeas; and that seven days from the date of this order shall be allowed to either party in which to present a certificate of evidence herein.

Dated July 1, 1895.

... .

150 On the same day to-wit, the first day of July, A. D. 1895, there was filed in the clerk's office of said court, a certificate of Evidence, which said Certificate of Evidence is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR SAID DISTRICT AND DIVISION.

Union Trust Company of New York, Complainant. vs. Atchison, Topeka & Santa Fe Railroad Company, Defendant.	In Chancery. G. N. 23,211. G. N. 23,276.
In re Wilson T. Keenan vs. Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company.	Intervening Petition.
In re Doud & Keefer, et al., vs. Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company.	Intervening Petition.

CERTIFICATE OF EVIDENCE.

Certificate of Evidence.

Be it remembered, That upon the hearing upon the intervening petitions in the above entitled causes and the answers thereto, the following evidence was introduced by the petitioners to be considered in connection with their said petition, viz:

151 Copies of the bills of lading referred to in paragraph 2, of respondent's original answer to the petition of said Keenan which are as follows:

152 (67)

Atchison, Topeka & Santa Fe Railroad Company

J. W. Reinhart, John J. McCook, Joseph C. Wilson, *Receivers.* Certificate of Evidence.

LIVE STOCK CONTRACT.

Way Bill Nos. 562 & 563.

State Numbers of Way-Bills pertaining to shipments of Live Stock mentioned in this Contract.

DUPLICATE.

No. of Cars.	Initials.
.4129.	. H 24.
.4863.	. . " . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .

NOT NEGOTIABLE.

....K C Sys....Station,....10/31....1894.

Received of..Patton & Martin....Cars..2..

(Cattle Head) to be delivered at..Chicago..

Station, at rate of Trff.

...Mjs... Per..for
....Per.. " Cattle
.....Per.. "

} As per conditions of current tariffs.

Consigned to....W. T. Keenan.....

at.....Chicago Ills.....

1. Agreement made between the Atchison, Topeka & Santa Fe Railroad Company, party of the first part, and W. T. Keenan, party of the second part: Witnesseth, that in consideration of above-named rates and other valuable considerations (hereby acknowledged)—the said party of the second part hereby relieves said party of the first part from the liability of a common carrier in the transportation of said stock, and agrees that such liability shall be only that of a private carrier for hire.

2. And said party of the second part hereby accepts for such transportation the cars provided by said company, for use in the shipment of said stock, and hereby assumes all risk of injury which the animals, or any of them, may receive in consequence of their

Certificate of Evidence.

being wild, unruly or weak, or maiming each other or themselves, or in consequence of heat or suffocation or other ill effects of being crowded in the cars, or on account of being injured by the burning of hay, straw or other material used by the owner for feeding or bedding the stock or otherwise, and also all risk of damage or injury or loss whatever, which may be sustained by reason of any delay or detention in such transportation, whether occasioned by any mob, strike or threatened violence to person or property from any source, or injury to tracks or yards, and any and all other causes, whether mentioned or not, and all risks of the escape of any portion of said stock, or of loss or damage from any other cause or thing, not resulting from the willful negligence of the agents of said party of the first part.

3. And said party of the second part further agrees that he will load and unload said stock at his own risk, and feed, water and attend the same at his own expense and risk while it is in the stock yards of the party of the first part awaiting shipment, and while on the cars, or at feeding or transfer points, or where it may be unloaded for any purpose.

4. And it is further agreed, that the said party of the second part will see that said stock is securely placed in the cars furnished, and that the cars are securely and properly fastened, so as to prevent the escape of said stock therefrom.

5. And it is further agreed, that in case the said party of the first part shall furnish laborers to assist in loading or unloading said stock, they shall be subject to the orders, and deemed employes of said party of the second part, while so assisting.

6. And for the consideration before mentioned, said party of the second part further agrees, that as a *Condition Precedent* to his right to recover any damages for loss or injury to said stock, he will give notice in writing of his claim therefor to some officer of said party of the first part, or its nearest station agent, before said stock is removed from the place of destination above mentioned, or from the place of delivery of the same to said party of the second part, and before such stock is mingled with other stock.

7. It is understood and agreed that the stock shipped under this contract is transported at the above rates upon the representation of the second party that its value does not exceed $100.00 for each horse or pony (gelding, mare or stallion), mule or Jack,

$50.00 for each ox, bull or steer, $30.00 for each cow, $10.00 for each calf, $10.00 for each hog, $3.00 for each sheep or goat; and the first part shall not be liable for loss or damage to said stock in excess of those sums, nor for any sum in excess of their fair cash value at the time and place of shipment.

8. Agents of this Company are not authorized to agree to forward Live Stock to be delivered at any special time.

9. As to stock consigned to Stock Yards, the tracks of which connect with those of the first party, or to any person at such yards, the second party agrees that all liability of the first party shall end when it delivers the cars containing the stock upon the tracks of said Stock Yards Company; and the first party shall not be liable for any loss or damage which may thereafter arise to said stock from any cause.

10. All the matters written or printed on the back hereof are made a part of this instrument as fully and effectually as if set forth in its body.

11. If the whole or any part of any provision of this instrument shall be adjudged void by a tribunal of competent jurisdiction, the remaining provisions or parts of provisions in themselves valid shall not be effected thereby, but shall be as valid and enforceable as if the invalid provision or part of provision had not been inserted herein.

12. The party of the first part shall not be liable for loss or injury to any of said stock unless the same shall be affirmatively proven to have been caused while on its railway through its gross negligence or that of some of its agents or servants.

13. THE EVIDENCE THAT THE SAID PARTY OF THE SECOND PART, AFTER A FULL UNDERSTANDING THEREOF, ASSENTS TO ALL THE CONDITIONS OF THE FOREGOING CONTRACT IS HIS SIGNATURE HERETO.

J. Z. RORABACK,
Agent for the Company.

Witness:
J. CONNING,

.....
Shipper.

(To be other than either signer of the contract.)

Executed in duplicate.

This Duplicate must be sent to the Auditor of Freight Receipts.

154 (67)

Atchison, Topeka & Santa Fe Railroad Company

Certificate of Evidence. J. W. Reinhart, John J. McCook, Joseph C. Wilson, *Receivers.*

LIVE STOCK CONTRACT.

Way Bill Nos. 524 & 525.

State Numbers of Way-Bills pertaining to shipments of Live Stock mentioned in this Contract.

DUPLICATE.

No. of Cars.	Initials.
.2601.	H 24.
.2431.	"
.....	.....
.....	.....
.....	.....
.....	.....

NOT NEGOTIABLE.

....K C Sys....Station,...Oct. 30....1894.

Received of..Patten & Martin....Cars..2..

(Cattle Head) to be delivered at..Chicago..

Station, at rate of Trff.

...Mjs... Per..for

.....Per.. " Cattle

.....Per.. "

As per conditions of current tariffs.

Consigned to....W. T. Keenan.....

at.....Chicago Ills.....

NOTICE.—Agents must have Shipper sign duplicate in Copying Ink and take an impression of same before forwarding to Auditor of Freight Receipts.

1. Agreement made between the Atchison, Topeka & Santa Fe Railroad Company, party of the first part, and W. T. Keenan, party of the second part: Witnesseth, that in consideration of above-named rates and other valuable considerations (hereby acknowledged)—the said party of the second part hereby relieves said party of the first part from the liability of a common carrier in the transportation of said stock, and agrees that such liability shall be only that of a private carrier for hire.

2. And said party of the second part hereby accepts for such transportation the cars provided by said company, for use in the shipment of said stock, and hereby assumes all risk of injury which the animals, or any of them, may receive in consequence of their

Certificate of Evidence.

being wild, unruly or weak, or maiming each other or themselves, or in consequence of heat or suffocation or other ill effects of being crowded in the cars, or on account of being injured by the burning of hay, straw or other material used by the owner for feeding or bedding the stock or otherwise, and also all risk of damage or injury or loss whatever, which may be sustained by reason of any delay or detention in such transportation, whether occasioned by any mob, strike or threatened violence to person or property from any source, or injury to tracks or yards, and any and all other causes, whether mentioned or not, and all risks of the escape of any portion of said stock, or of loss or damage from any other cause or thing, not resulting from the willful negligence of the agents of said party of the first part.

3. And said party of the second part further agrees that he will load and unload said stock at his own risk, and feed, water and attend the same at his own expense and risk while it is in the stock yards of the party of the first part awaiting shipment, and while on the cars, or at feeding or transfer points, or where it may be unloaded for any purpose.

4. And it is further agreed, that the said party of the second part will see that said stock is securely placed in the cars furnished, and that the cars are securely and properly fastened, so as to prevent the escape of said stock therefrom.

5. And it is further agreed, that in case the said party of the first part shall furnish laborers to assist in loading or unloading said stock, they shall be subject to the orders, and deemed employes of said party of the second part, while so assisting.

6. And for the consideration before mentioned, said party of the second part further agrees, that as a *Condition Precedent* to his right to recover any damages for loss or injury to said stock, he will give notice in writing of his claim therefor to some officer of said party of the first part, or its nearest station agent, before said stock is removed from the place of destination above mentioned, or from the place of delivery of the same to said party of the second part, and before such stock is mingled with other stock.

7. It is understood and agreed that the stock shipped under this contract is transported at the above rates upon the representation of the second party that its value does not exceed $100.00 for each horse or pony (gelding, mare or stallion), mule or Jack,

Certificate of Evidence.

$50.00 for each ox, bull or steer, $30.00 for each cow, $10.00 for each calf, $10.00 for each hog, $3.00 for each sheep or goat; and the first part shall not be liable for loss or damage to said stock in excess of those sums, nor for any sum in excess of their fair cash value at the time and place of shipment.

8. Agents of this Company are not authorized to agree to forward Live Stock to be delivered at any special time.

9. As to stock consigned to Stock Yards, the tracks of which connect with those of the first party, or to any person at such yards, the second party agrees that all liability of the first party shall end when it delivers the cars containing the stock upon the tracks of said Stock Yards Company; and the first party shall not be liable for any loss or damage which may thereafter arise to said stock from any cause.

10. All the matters written or printed on the back hereof are made a part of this instrument as fully and effectually as if set forth in its body.

11. If the whole or any part of any provision of this instrument shall be adjudged void by a tribunal of competent jurisdiction, the remaining provisions or parts of provisions in themselves valid shall not be effected thereby, but shall be as valid and enforceable as if the invalid provision or part of provision had not been inserted herein.

12. The party of the first part shall not be liable for loss or injury to any of said stock unless the same shall be affirmatively proven to have been caused while on its railway through its gross negligence or that of some of its agents or servants.

13. THE EVIDENCE THAT THE SAID PARTY OF THE SECOND PART, AFTER A FULL UNDERSTANDING THEREOF, ASSENTS TO ALL THE CONDITIONS OF THE FOREGOING CONTRACT IS HIS SIGNATURE HERETO.

J. Z. RORABACK,
Agent for the Company.

Witness:
J. CONNING,

PATTON & MARTIN,
Shipper.

(To be other than either signer of the contract.)

Executed in duplicate.

156 And also a stipulation by counsel for respondents in open court, that the defendant railroad company since the extension of its railroad to Chicago has had and now has a general freight depot at the corner of State and 12th streets in the city of Chicago and that there is and always has been at said freight depot a moveable chute, upon which, when placed along side a car, horses and other live stock can walk or be led from such car to the ground, or from the ground to such car. That said freight depot is not constructed with drive ways or chutes so that live stock can walk or be driven from the ground or street level to the floor of said freight house (which is on a level with the floor of freight cars) or from said freight house to the said street level; that said freight house is not so constructed that live stock unloaded therein can be there kept or fed until called for by the consignees thereof; that there are not adjoining or connected with said freight house any enclosed yards or lots into which live stock upon being unloaded from cars can be placed or kept until called for by the consignees thereof; that there are or connected with said freight house no other means for enclosing or feeding car loads of live stock received at said freight house. That live stock when unloaded at said 12th street freight house by means of said moveable chute would be upon land of said defendant which is not separated from said State street or the other railroads in that vicinity by any fence or enclosure. That since the extension of said defendant's railroad to Chicago, as its Eastern terminus, all the live stock (except as hereinafter stated) transported over the railroad of said defendant and consigned to Chicago has been by said defendant and its receivers, whether there were any instructions in reference thereto by the consignors or consignees or not, transported to said stock yards of said Union Stock Yard and Transit Co. (the reasons for so transporting and unloading being claimed by respondents on the hearing to be those set out in their answer); and that the number of cars so transported and unloaded at said stock yards has amounted to many thousands of carloads per annum; and that there has been delivered at said 12th street station during said period only a few shipments of live stock per annum, consisting in the main of horses. Certificate of Evidence.

157 It is also likewise stipulated by counsel for the respondents that upon the arrival of the four cars of cattle mentioned in said Keenan's petition at Chicago, said Keenan gave no directions to the agent of said receivers to transport said cattle to said Union Stock Yards, but that said cars were by said receivers, without such directions from said Keenan, transported to said Stock Yards, of said

Certificate of Evidence.

Union Stock Yards & Transit Company by the agents of said receivers placed alongside of chutes belonging to said Stock Yards and Transit Company and there unloaded by the agents of said Stock Yards and Transit Company into the pens and enclosed yards there situated and belonging to said Union Stock Yard and Transit Company with the understanding that all the charges of said receivers for transporting and transferring said stock should follow said stock and should be collected by said Stock Yards and Transit Company before it should make delivery of said stock. And that after the arrival of said four carloads of cattle at Chicago, said Keenan tendered to the agent of said receivers all the sums due or demanded from said Keenan as their freight or charges upon said four carloads of cattle, except the sum of two dollars per car, being the sum of eight dollars, which was claimed by said receivers upon the ground stated in said Keenan's petition. That said receivers refused to deliver said cattle because of said Keenan's refusal to pay said eight dollars; and said receivers upon the hearing of this cause claimed the right to withhold said cattle from said Keenan until said two dollars per car should be paid, which said receivers claimed, and still claim, the right to collect as their lawful charges, for transporting said cars from their said railroad to said stock yards; it appearing that the payment of said charge by the Union Stock Yard and Transit Company to said receivers was made by mistake.

And that said respondents upon said hearing introduced in evi-
158 dence in connection with their said answers a copy of the freight schedule and tariff between the different railroads fixing the rate of transportation of live stock from Kansas City to Chicago referred to in said petitions and in said answers, which was as follows:

JOINT FREIGHT TARIFF NO. 181 OF THE ATCHISON, TOPEKA & SANTA FE RAILROAD.

Live Stock, Rated in Cents per 100 Pounds—Minimum Weights.

	Cattle, also Sheep in D. D. Cars.	Hogs, D. D. Cars.	Hogs, S. D. Cars.	Sheep, S. D. Cars.
Cars 31 feet or under in length, inside measurement..	19,000	19,000	15,000	10,000
Cars over 31 feet to but not in excess of 33 feet 9 inches in length, inside measurement.....	20,500	20,500	16,000	11,000
Cars over 33 feet 9 inches in length, inside measurement	22,000	22,000	17,000	12,000

LIVE STOCK, WEIGHT OF.—Track Scale Weights will apply, the weight to be charged to be not less, however, than the minimum weights provided herein.

Live Stock, C. L., Rated in Dollars per Car.

The rates named on Live Stock per car apply upon Live Stock, C. L., in cars 29 feet but not exceeding 30 feet 6 inches in length. internal measurement. Upon cars not included in the foregoing, apply the following:

Less than 29 feet in length.....	94%	of the	rates	as established.
Over 30 feet 6 inches to and including 32 feet.....	104%	"	"	"
Over 32 feet to and including 33 feet 6 inches.....	107%	"	"	"
Over 33 feet 6 inches to and including 36 feet.....	110%	"	"	"

Agents will note on Way-bills the length of the car.

BETWEEN	IN CARLOADS, PER 100 LBS.					LIVE STOCK Subject to minimum weight shown on page 2.			
						In Dollars per Car.	In Cts. per 100 Lbs.		
St. Joseph, Atchison, Leavenworth, Kansas City, Council Bluffs, Omaha and South Omaha. AND	Seed, Flax.	Wheat and Flour	Corn, Rye, Oats, Barley and Bran.	ORE (Silver, Lead, Antimony or Copper), valuation not exceeding $100 per net ton, and so receipted for.	BASE BULLION, Copper Residue and Copper Matte, Pig or Ingot, agreed valuation not exceeding $100 per net ton; also Lead and Pig Lead, C. L., min. wt. per car, 20,000 lbs.	Horses and Mules per standard car (see page 2)	Cattle and Calves	Hogs	Sheep
St. Paul, Minneapolis, Minnesota, Trfr. and Stillwater	27½	26½	22½	15	17½	85.00	28½	.....	.....
Chicago, Milwaukee and points common therewith	25	24	20	15	17½	75.00	23½	22	25
Peoria and Pekin	22½	21½	17½	12½	15	70.00	20	18½	21½
East St. Louis, St. Louis, and points north on either bank of the Mississippi River, to and including Dubuque, Iowa.	20	19	15	10	12½	55.00	20	18½	21½

175 Atchison, Topeka & Santa Fe R. R. Certificate of Evidence.

(East of Missouri River.)

J. W. Reinhart, John J. McCook, Joseph C. Wilson, Receivers.

Amendment No. 3.

(Cancels Amendment No. 1 and Correction No. 1 thereto.)

—to—

A. T. & S. F. R. R. Tariff No. 2266-A.

Effective August 1, 1894.

Make the following corrections and additions in above numbered tariff:

ON	FROM	TO	RATES.
Celery, C. L., straight or mixed with Asparagus, Cauliflower and other vegetables enumerated alike in Western Classification.	Chicago, Peoria, Mississippi River, and Com. Points.	Kansas City.....Mo. St. Joseph..... " Atchison.....Kan. Leavenworth... "	Fifth Class.

ON	TO	VIA	RATES.
Wheat, C. L.. for Milling purposes	Lithfield.....Ill. Pittsfield..... " Jacksonville... "	Lexington Junction and Wabash R. R.	Mississippi River Rates.
Do	Springfield.....Ill.	C. P. & St. L. Ry. or Lexington Jct. and Wabash R. R.	Peoria Rates

Routing Instructions on Shipments from and to Leavenworth, Kan.

All freight between Leavenworth, Kan. and A. T. & S. F. R. R. Stations East of Missouri River (except St. Joseph Branch) must be routed and forwarded via Argentine, Kan.

Stopping Cars of Live Stock in Transit to Finish Loading.

Cars loaded with Live Stock may be stopped to finish loading

rtificate of Evidence.

at $5.00 per car for each stop, when the stopping station is on the direct line between point of shipment and the destination, no portion of the contents of the car loaded at original point of shipment to be left at the stopping point.

Stopping of Live Poultry to Finish Loading.

The rule regarding stoppage of Live Poultry to finish loading, shown on page 14 of tariff, will not apply on shipments from and to stations on the A. T. & S. F. R. R. in Iowa and Missouri.

J. A. Hanley, Frt. Traffic Manager, Santa Fe System, Chicago, Ill.
W. B. Biddle, Ass't Frt. Traffic Manager, Santa Fe System, Chicago, Ill.
F. C. Gay, General Freight Agent, A. T. & S. F. R. R., Topeka, Kan.
J. G. Miller, Ass't Gen. Frt. Agent, A. T. & S. F. R. R., Chicago, Ill.

Sent Interstate Commerce Commission, July 27, 1894.

Chicago, July 27, 1894.

Amendment No. 6 to A. T. & S. F. R. R. Tariff No. 2266-A.
(Cancels Amendment No. 5.)

Amendments 3 and 6, and Supplements 1, 2, 3 and 5 include all changes.

176

J. G. Miller,
Ass't Gen. Ft. Agent
A. T. & S. F. R. R., Chicago, Ill.

Receipt No. 383.

Amendment No. 5

(Includes Amendment Nos. 1, 2, 3 and 4)

—to—

Joint Freight Tariff No 181

—of the—

Atchison, Topeka & Santa Railroad,
Burlington, Cedar Rapids & Northern Railway,

Chicago & Alton Railroad,
Chicago, Burlington & Quincy Railroad,
Chicago, Burlington & Northern Railroad,
Chicago Great Western Railway,
Chicago, Milwaukee & St. Paul Railway,
Chicago & North-Western Railway,
Chicago, Rock Island & Pacific Railway,
Chicago, St. Paul, Minneapolis & Omaha Railway,
Hannibal & St. Joseph Railroad,
Iowa Central Railway,
Kansas City, Fort Scott & Memphis Railroad,
Kansas City, St. Joseph & Council Bluffs Railroad,
Minneapolis & St. Louis Railway,
Missouri Pacific Railway,
Rock Island & Peoria Railway,
St. Louis & San Francisco Railway,
St. Louis, Keokuk & North-Western Railroad,
The Wabash Railroad.

——between——

Chicago, Milwaukee, St. Paul, Minneapolis, Peoria, St. Louis, Etc., Memphis

——and——

Kansas City, St. Joseph, Atchison or Leavenworth, Council Bluffs, Omaha and South Omaha.

——

Effective on the dates named,

——

Aldace F. Walker,
John J. McCook,
Joseph C. Wilson,
} Receivers, A. T. & S. F. System.

——

F. C. Gay, General Freight Agent, A. T. & S. F. R. R.
T. H. Simmons, General Freight Agent, B. C. R. & N. R'y.
H. H. Courtright, General Freight Agent, C. & A. R. R.
P. C. Stohr, General Freight Agent, C. G. W. R'y.
Thos. Miller, General Freight Agent, C. B. & Q. R. R.
W. J. C. Kenyon, General Freight Agent, C. B. & N. R. R.
J. H. Hiland, General Freight Agent, C. M. & St P. R'y.

Certificate of Evidence.

H. R. McCullough, General Freight Agent, C. & N.-W. R'y.
J. M. Johnson, General Freight Agent, C. R. I. & P. R'y.
J. T. Clark, General Freight Agent, C. St. P. M. & O. R'y.
E. C. Palmer, Jr., General Freight Agent, Iowa Cent. R'y.
J. J. Fletcher, Gen. Freight Agent, K. C. Ft. S. & M. R. R.
W. M. Hopkins, General Freight Agent, M. & St. L. R'y.
W. C. Stith, General Freight Agent, Mo. Pac. R'y.
R. Stockhouse, General Freight Agent, R. I. & P. R'y.
F. D. Russell, General Freight Agent, St. L. & S. F. R'y.
Howard Elliott, General Freight Agent, St. L. K. & N.-W. R. R., H. & St. J. R. R., K. C. St. J. & C. B. R. R.
S. B. Knight, General Freight Agent, Wabash R. R.

J. W. Midgley, Chairman,
Chicago, October 12, 1894. "The Rookery," Chicago.

Receipt No. 383.

177 The following corrections will be made in the tariff effective upon the dates named below:

Effective July 1, 1894. Cement (except Mortar Color Cement), C. L., minimum weight 30,000 lbs., as shown on page 4.

Effective July 23, 1894. Plaster, Cement (except Mortar Color Cement), Stucco and Soapstone Finish for Plastering, straight C. L., minimum weight 30,000 lbs.; Lime, straight C. L., minimum weight 24,000 lbs. Mixed carloads of above, minimum weight 30,000 lbs.

Coke, C. L.

Effective July 1, 1894. Correct the rate on Coke between Peoria and Missouri River points to 11 cents per 100 lbs. (Typographical error.)

Crackers, L. C. L.

Effective July 23, 1894. Cancel the application of 3d Class rates on Crackers, L. C. L., as shown on page 10 of tariff.

Fresh Meat, C. L.

The rate on Fresh Meat, C. L., between Omaha and St. Paul, Minneapolis and Minnesota Transfer, is 28 cents per 100

lbs.; and between Kansas City, Atchison, Leavenworth, St. Joseph and St. Paul, Minneapolis, etc., is 30 cents per 100 lbs.

Correct the rate on Horses between Missouri River and Peoria to read $65.00 per car.

Salt, C. L.

Correct the rates on Salt, as shown on page 6 of the tariff to apply west-bound only. The east-bound rates will be, to Mississippi River points 11⅔, to Peoria 13⅓ and to Chicago 15 cents per 100 lbs. The rate from Chicago will apply via C. B. & Q. R. R.

Zinc Ore, C. L.

Effective October 20, 1894. The rate on Zinc Ore, C. L., released to valuation of $100 per net ton, will be to and from Chicago 15 Peoria 12½ and Mississippi River points 10 cents per 100 lbs.

Castor Oil, L. C. L.

Effective October 20, 1894. The rate on Castor Oil, L. C. L., from Kansas City to Memphis will be 45 cents per 100 lbs.

Minimum Charge Between Memphis and Missouri River Points.

Effective September 10, 1894. Single shipments of one or more classes from one consignor to one consignee will be charged for at tariff rates, subject to a minimum charge of 50 cents for the entire consignment.

178 And also a copy of the schedule and notice amendatory thereof and providing for the Two Dollar terminal charge for transferring live-stock from said defendant railroad to said Union Stock Yards, referred to in said answers of said respondents, which was as follows:

Certificate of Evidence. 179

Atchison, Topeka & Santa Fe R. R.

(East of Missouri River)

J. W. Reinhart, John J. McCook, Joseph C. Wilson, Receivers.

G. F. O. Circular No. 1352-A-Corrected.

Cancels G. F. O. Circular No. 1352.

Switching Charges at Union Stock Yards, Chicago, Illinois, and Hammond, Indiana.

Chicago, July 18, 1894.

Effective July 18, 1894. Live Stock and all other traffic received from and delivered to the Union Stock Yards, Chicago, and all industries located on the tracks of the Union Stock Yards and Transit Co., the Indiana State Line Ry., or the Northern Indiana R. R. at Hammond, Indiana, will, in addition to the rates named to or from Chicago, be subject to the following terminal charges:

To and from Union Stock Yards, Chicago. To and from Union Stock Yards & Transit Co. To and from Indiana State Line Ry.	$2.00 per car.
To and from Northern Indiana R. R., Hammond,	$3.00 per car.

J. A. Hanley, Frt. Traffic Manager, Santa Fe System, Chicago, Ill.
W. B. Biddle, Ass't Frt. Traffic Manager, Santa Fe System, Chicago, Ill.
F. C. Gay, General Freight Agent, A. T. & S. F. R. R., Topeka, Kan.
J. G. Miller, Ass't Gen. Frt. Agent, A. T. & S. F. R. R., Chicago, Ill.

180 Amending all Joint Tariffs. Receipt No. 324 Certificate of Evidence.

Western Freight Association

Joint Circular No. 62

—of the—

Atchison, Topeka & Santa Fe Railroad,
Burlington, Cedar Rapids & Northern Railway,
Chicago & Alton Railroad,
Chicago, Burlington & Northern Railroad,
Chicago, Burlington & Quincy Railroad,
Chicago & North-Western Railway,
Chicago, Milwaukee & St. Paul Railway,
Chicago, Rock Island & Pacific Railway,
Chicago Great Western Railway,
Chicago, St. Paul, Minneapolis & Omaha Railway,
Hannibal & St. Joseph Railroad,
Illinois Central Railroad,
Iowa Central Railway,
Kansas City, St. Joseph & Council Bluffs Railroad,
Minneapolis & St. Louis Railway,
Missouri Pacific Railway,
Rock Island & Peoria Railway,
St Louis & San Francisco Railway,
St. Louis, Keokuk & North-Western Railroad,
Wabash Railroad,
Wisconsin Central Lines.

——

Chicago, May 18, 1894.

On and after June 1, 1894, a terminal charge of $2.00 per car will be made in addition to the Chicago rates, as shown in the tariffs of the Western Freight Association, on Live Stock and other freight received from or delivered to the Stock Yards or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway and the Northern Indiana Railroad.

The foregoing will apply as an amendment to all tariffs issued by the above named Association; also to all joint tariffs published by connections.

Certificate of Evidence.

F. C. Gay, General Freight Agent, A. T. & S. F. R. R.
T. H. Simmons, General Freight Agent, B. C. R & N. R'y.
W. C. Stith, General Freight Agent, Mo. Pac. R'y.
F. D. Russell, General Freight Agent, St. L. & S. F. R'y.
H. H. Courtright, General Freight Agent, C. & A. R. R.
W. J. C. Kenyon, General Freight Agent, C. B. & N. R. R.
Thos. Miller, General Freight Agent, C. B. & Q. R. R.
H. R. McCullough, General Freight Agent, C. & N. W. R'y.
J. H. Hiland, General Freight Agent, C. M. & St. P. R'y.
P. C. Stohr, General Freight Agent, C. G. W. R'y.
J. T. Clark, General Freight Agent, C. St. P. M. & O. R'y.
J. M. Johnson, General Freight Agent, C. R. I. & P. R'y.
J. G. Woodworth, General Freight Agent, Iowa Central R'y.
W. E. Keepers, General Freight Agent, Ill. Cent. R. R.
R. Stockhouse, General Freight Agent, R. I. & P. R'y.
Howard Elliott, General Freight Agent, St. L. K. & N.-W. and H. &. St. J. R. R's.
W. M. Hopkins, General Freight Agent, M. & St. L. R'y.
S. B. Knight, General Freight Agent, Wabash R. R.
C. L. Wellington, General Freight Agent, Wis. Cent. Lines.

J. W. Midgley,
Chairman.

Receipt No. 324.

181 Western Freight Association,

Tariff Department.

Chicago, Ill., May 10, 1894.

C. C. McCain, Esq.,
Auditor, Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

In compliance with the requirements of Section 6 of the "Act to regulate commerce," I transmit herewith, for filing with the Commission, copies of tariffs as follows:

Issue and Number.	Date Taking Effect.	Description.
		Joint Circular #62.

The above is an exact copy of letter of transmittal which accompanied Joint Circular No. 62.

J. W. Midgley,
Chairman.
W. H. Hosmer,
Secy.

J. W. Midgley,
Chairman.

Certificate of Evidence.

182 Amending all Joint Tariffs. Receipt No. 346

Western Freight Association

Joint Circular No. 66
(Canceling Joint Circular No. 62)

—of the—

Atchison, Topeka & Santa Fe Railroad,
Burlington, Cedar Rapids & Northern Railway,
Chicago & Alton Railroad,
Chicago, Burlington & Northern Railroad,
Chicago, Burlington & Quincy Railroad,
Chicago & North-Western Railway,
Chicago, Milwaukee & St. Paul Railway,
Chicago, Rock Island & Pacific Railway,
Chicago Great Western Railway,
Chicago, St. Paul, Minneapolis & Omaha Railway,
Hannibal & St. Joseph Railroad,
Illinois Central Railroad,
Iowa Central Railway,
Kansas City, St. Joseph & Council Bluffs Railroad,
Minneapolis & St. Louis Railway,
Missouri Pacific Railway,
Rock Island & Peoria Railway,
St. Louis & San Francisco Railway,
St. Louis, Keokuk & North-Western Railroad,
Wabash Railroad,
Wisconsin Central Lines.

——

Chicago, June 27, 1894.

On and after July 9, 1894, a terminal charge of $2.00 per car will be made in addition to the Chicago rates, as shown in the tariffs of the Western Freight Association, on Live Stock and other Freight received from or delivered to the Stock Yards or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and $3.00 per car on shipments received from or delivered to the Northern Indiana Railroad at Hammond.

Certificate of Evidence.

The foregoing will apply as an amendment to all tariffs issued by the above named association; also to all joint tariffs published by connections.

F. C. Gay, General Freight Agent, A. T. & S. F. R. R.
T. H. Simmons, General Freight Agent, B. C. R. & N. R'y.
W. C. Stith, General Freight Agent, Mo. Pac. R'y.
F. D. Russell, General Freight Agent, St. L. & S. F. R'y.
H. H. Courtright, General Freight Agent, C. & A. R. R.
W. J. C. Kenyon, General Freight Agent, C. B. & N. R. R.
Thos. Miller, General Freight Agent, C. B. & Q. R. R.
H. R. McCullough, General Freight Agent, C. & N. W. R'y.
J. H. Hiland, General Freight Agent, C. M. & St. P. R'y.
P. C. Stohr, General Freight Agent, C. G. W. R'y.
J. T. Clark, General Freight Agent, C. St. P. M. & O. R'y.
J. M. Johnson, General Freight Agent, C. R. I. & P. R'y.
J. G. Woodworth, General Freight Agent, Iowa Cent. R'y.
W. E. Keepers, General Freight Agent, Ill. Cent. R. R.
R. Stockhouse, General Freight Agent, R. I. & P. R'y.
Howard Elliott, General Freight Agent, St. L. K. & N.-W. and H. & St. J. R. R's.
W. M. Hopkins, General Freight Agent, M. & S. L. R'y.
S. B. Knight, General Freight Agent, Wabash R. R.
C. L. Wellington, General Freight Agent, Wis. Cent. Lines.

J. W. Midgley,
Chairman.

Receipt No. 346.

183 Western Freight Association.

Tariff Department.

Chicago, Ill., Jun. 27, 1894.

C. C. McCain, Esq.,
Auditor, Interstate Commerce Commision,
Washington, D. C.

Dear Sir:

In compliance with the requirements of Section 6 of the "Act to regulate commerce," I transmit herewith, for filing with the Commission, copies of tariffs as follows:

Issue and Number.	Date Taking Effect.	Description.
		Joint Circular #66.

The above is an exact copy of letter of transmittal which accompanied Joint Circular No. 66.

J. W. Midgley,
Chairman.
W. H. Hosmer,
Secy.

J. W. Midgley,
Chairman.

Which was all the evidence introduced by either party upon said hearing.

Forasmuch as the matters above set forth do not fully appear of record, the said respondents to said intervening petitions tender this, their certificate of evidence, and pray that the same may be signed and sealed by the Judge of this court, which is done accordingly, this first day of July, A. D. 1895.

P. S. Grosscup, (Seal.)
District Judge.

[Endorsed]: Filed July 1, 1895.

S. W. Burnham,
Clerk.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

To Wilson T. Keenan, Doud & Keefer, et al, Greeting:

You are hereby cited and admonished to be and appear at the Citation.
186 United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago on the 14th day of September next pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States, for the Northern District of Illinois, wherein Aldace F. Walker, John J. McCook & Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company are appellants and you are appellees to show cause if any there be why the decree rendered against said appellant as in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States this 19th day of August, in the year of our Lord one thousand eight hundred and ninety-five.

23,211 WM. A. WOODS.

United States Circuit Court of Appeals, for the seventh circuit. Union Trust Co. of New York vs. A., T. and S. F. R. R. Co. In re Wilson T. Keenan & Doud & Keefer vs. Aldace F. Walker, John J. McCook & Joseph C. Wilson, Receivers of A., T. & S. F. R. R. Co. Citation. To Wilson T. Keenan & Doud & Keefer, et al.

Service hereof admitted this 21st day of August, 1895, for Doud & Keefer, and Wilson T. Keenan, et al.

GREEN, ROBBINS & HURON,
Attorneys for Doud & Keefer, and Wilson T. Keenan, et al.

NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION. }

Clerk's Certificate. 185 I, S. W. Burnham, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be true and correct copies of the Bill filed December 26, 1893, and of the two orders appointing receivers and a true and correct transcript of the record of all the proceedings had in the matter of the intervening petition of Wilson T. Keenan and of the intervening petition of Doud and Keefer, et al., in said court in the cause wherein Union Trust Company of New York is the complainant, and Atchison, Topeka and Santa Fe Railroad Company is the defendant as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 11th day of September, A. D. 1895.

S. W. BURNHAM,
Clerk.

[SEAL]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

Union Trust Company of New York,
Complainant,
vs.
Atchison, Topeka & Santa Fe Railroad Company,
Defendants.

In re
Wilson T. Keenan,
ads.
Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company.
Intervening Petition.

In re
Doud and Keefer, et al.,
ads.
Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of the Atchison, Topeka and Santa Fe Railroad Company.
Intervening Petition.

Stipulation. It is hereby stipulated and agreed by and between the parties to the above entitled intervening petitions, that only the following parts of the record relating to the intervening petitions of Wilson T. Keenan and Doud and Keefer, et al., be printed, and that the cause be heard only on the parts so printed.

First. Order granting leave to Wilson T. Keenan to file intervening petition.

Second. Intervening petition of Wilson T. Keenan, including first page of Live Stock Contract, attached thereto and marked "Exhibit A," and omitting the portion printed on the back thereof.

Third. Answer of Receivers to the intervening petition of Wilson T. Keenan.

Fourth. Supplemental answer of Receivers to the intervening petition of Wilson T. Keenan.

Stipulation.

Fifth. Order granting leave to Doud and Keefer, et al., to file intervening petition.

Sixth. Intervening petition of Doud and Keefer, et al.

Seventh. Answer of receivers to intervening petition of Doud and Keefer, et al.

Eighth. Decision of Judge Grosscup of November 26th, 1894.

Ninth. Order of June 28th, 1895, setting aside order of December 14th, 1894, allowing an appeal and continuing the application to the next term of court.

Tenth. Order of July 1st, 1895, setting aside order and decree of November 26th, 1894.

Eleventh. Order of July 1st, 1895, that receivers deliver cars to Wilson T. Keenan without exacting terminal charge, and that they discontinue such charge.

Twelfth. Petition for leave to prosecute an appeal.

Thirteenth. Assignments of error.

Fourteenth. Order of July 1st, 1895, granting leave to prosecute appeal.

Fifteenth. Certificate of evidence, omitting the parts printed on the back of the Live Stock Contracts and omitting all of joint Freight Tariff, No. 181, except the parts thereof marked in blue pencil.

Sixteenth. Certificate of Clerk of Court.

Seventeenth. Citation.

Dated September 14th, A. D. 1895.

A. W. GREEN and
HENRY P. ROLSTON,
Attys. for Petitioners.
ROBERT DUNLAP,
ELDON J. CASSODAY,
Attys. for Defendants.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

Union Trust Company of New York,
Complainant,
vs.
Atchison, Topeka & Santa Fe Railroad Company,
Defendants.

In re
Wilson T. Keenan,
ads.
Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of the Atchison, Topeka & Santa Fe Railroad Company.
Intervening Petition.

In re
Doud and Keefer, et al.,
ads.
Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of the Atchison, Topeka and Santa Fe Railroad Company.
Intervening Petition.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled intervening petitions, that only the following parts of the record relating to the intervening petitions of Wilson T. Keenan and Doud and Keefer, et al., be printed, and that the cause be heard only on the parts so printed.

First. Order granting leave to Wilson T. Keenan to file intervening petition.

Second. Intervening petition of Wilson T. Keenan, including first page of Live Stock Contract, attached thereto and marked "Exhibit A," and omitting the portion printed on the back thereof.

Third. Answer of Receivers to the intervening petition of Wilson T. Keenan.

Fourth. Supplemental answer of Receivers to the intervening petition of Wilson T. Keenan.

Stipulation.

Fifth. Order granting leave to Doud and Keefer, et al., to file intervening petition.

Sixth. Intervening petition of Doud and Keefer, et al.

Seventh. Answer of receivers to intervening petition of Doud and Keefer, et al.

Eighth. Decision of Judge Grosscup of November 26th, 1894.

Ninth. Order of June 28th, 1895, setting aside order of December 14th, 1894, allowing an appeal and continuing the application to the next term of court.

Tenth. Order of July 1st, 1895, setting aside order and decree of November 26th, 1894.

Eleventh. Order of July 1st, 1895, that receivers deliver cars to Wilson T. Keenan without exacting terminal charge, and that they discontinue such charge.

Twelfth. Petition for leave to prosecute an appeal.

Thirteenth. Assignments of error.

Fourteenth. Order of July 1st, 1895, granting leave to prosecute appeal.

Fifteenth. Certificate of evidence, omitting the parts printed on the back of the Live Stock Contracts and omitting all of joint Freight Tariff, No. 181, except the parts thereof marked in blue pencil.

Sixteenth. Certificate of Clerk of Court.

Seventeenth. Citation.

Dated September 14th, A. D. 1895.

A. W. GREEN and
HENRY P. ROLSTON,
Attys. for Petitioners.
ROBERT DUNLAP,
ELDON J. CASSODAY,
Attys. for Defendants.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OCTOBER TERM 1895. JANUARY SESSION.

MONDAY, January 6, 1896.

Court met pursuant to adjournment.

Present:

Hon. William A. Woods, Circuit Judge,
Hon. James G. Jenkins, Circuit Judge,
Hon. John W. Showalter, Circuit Judge.

Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of the Atchison, Topeka and Santa Fe Railroad Company,
Appellants,
275 *vs.*
Wilson T. Keenan *et al.*, Intervenors,
Appellees.

It is ordered by the court that this cause be, and the same is hereby set down for hearing January 22, 1896.

WEDNESDAY, January 22, 1896.

Court met pursuant to adjournment.
Present:
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge,
Hon. John W. Showalter, Circuit Judge.

Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of the Atchison, Topeka and Santa Fe Railroad Company,
Appellants,
275 *vs.*
Wilson T. Keenan, *et al.*, Intervenors,
Appellees.

Now, this day came the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. Robert Dunlop, counsel for appellants, and by Mr. A. W. Green and Mr. H. S. Robbins, counsel for appellees, and the court having heard the same, takes this matter under advisement.

MONDAY, May 4, 1896.

Court met pursuant to adjournment.

Present:

Hon. William A. Woods, Circuit Judge,
Hon. James G. Jenkins, Circuit Judge,
Hon. John W. Showalter, Circuit Judge.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

No. 275.—JANUARY SESSION, 1896.

Aldace F. Walker, John J. McCook and Joseph C. Wilson, Receivers of The Atchison, Topeka and Santa Fe Railroad Company, *Appellants,* *vs.* Wilson T. Keenan, *et al.*, Intervenors, *Appellees.*	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Heard before WOODS, JENKINS and SHOWALTER, Circuit Judges.

On the showing of the record, the Atchison, Topeka and Santa Fe Railroad, commencing, it may be assumed, at some point west or southwest of the State of Missouri, passes through Kansas City in that State to its terminal station or freight depot on, or near, the corner of Twelfth and State street, Chicago. About ten (10) miles back from this terminal station, a switch track runs from the main line of the road some six (6) miles to a point of junction with the track of the Union Stock Yards & Transit Company. This latter track extends from said point of junction to the cattle yards of the last named company, the place at which cattle are usually un-

loaded from the cars into such yards being about one-half (½) mile from the point of junction. This track of access to the cattle yards is a part of a system of railroad tracks aggregating some two hundred and forty-six (246) miles, which the Union Stock Yards & Transit Company (incorporated) was authorized by its charter to construct in and about its cattle yards and connecting therewith, and to charge for the use of. Said yards, commonly called the Union Stock Yards, is the market place and ordinary place of delivery for cattle shipped by the carload to Chicago. A car laden with cattle sent from Kansas City to Chicago will ordinarily be moved by the route described from the main line of the Atchison, Topeka and Santa Fe Railroad to the Union Stock Yards and there unloaded and delivered, rather than to the terminal station of the road at State and Twelfth streets—and for this reason cattle yards and appliances for unloading such cars have not been provided at such terminal station. Cattle cars aggregating many thousand per year, hauled to Chicago over said road, are so taken to, and unloaded at, the Union Stock Yards.

In December, 1893, as stated in the printed argument for appellants, the Union Trust Company of New York commenced a suit in the Circuit Court of the United States for the Northern District of Illinois to foreclose a mortgage upon the railroad property of the Atchison, Topeka & Santa Fe Railroad Company and for the appointment of receivers to take possession of the property, collect the tolls and operate the railroad pending the litigation. These appellants were appointed receivers, the suit is still pending, they are in possession of said railroad, and its traffic as a common carrier is now conducted by them.

On November 2, 1894, appellee Keenan filed in the cause his intervening petition making the receivers parties defendant thereto. He commences his petition with the statement:

> "That he resides in and is a citizen of the City of Chicago, State of Illinois, and is and has been for about twenty-nine years engaged in the business of receiving for sale on commission, buying, selling and shipping live stock at the Union Stock Yards heretofore adjoining and now within the corporate limits of said city."

He goes on to say that on the 30th and 31st days of October, 1894, four car-loads of cattle were shipped to him from Kansas City over the Atchison, Topeka & Santa Fe Railroad; that the cars containing his cattle were hauled over the road to Chicago and there taken to the Union Stock Yards and unloaded; that he has paid the freight from Kansas City to Chicago but the Receivers refuse to allow the cattle to pass into his custody without an additional

payment of eight dollars ($8.00), or two dollars ($2.00) for each of the four cars. He shows, also, that the way-bill for two of the cars, which document was subscribed by the shippers and by an agent of appellants, contains the specification, "to be delivered at Chicago station at rate of trff;" that on the other two cars the shipper did not advance the freight and as to them no written contract was subscribed by himself, or any person on his behalf: and that appellants have provided no means for unloading and delivering cattle at their said "Chicago station." Upon the theory that the Two Dollars per car is a charge made by appellants for moving such cars from the main line of their road to the Union Stock Yards and for there unloading the same, and for the use of the enclosures and appliances there provided in that behalf, and upon the theory that appellants are bound by law to provide at their said "Chicago station," or at some point on their line in Chicago, "platforms, chutes, yards, stations and cattle-pens," suitable and appropriate for the unloading and delivery of cattle, Keenan insists that the delivery station at the Union Stock Yards must be deemed their "Chicago station." Wherefore he asked the court to order that his cattle be turned over to him without payment of the Eight Dollars, and that appellants be required to provide such appliances for the delivery of cattle at some point on their road in Chicago, or, in default thereof, that they in future transfer to, and unload and deliver at, said Union Stock Yards, without any charge for so doing, all cattle consigned to him.

At the time of the filing of Keenan's intervening petition, other persons, firms and corporations, to the number of thirty-six (36), all cattle dealers doing business at the Union Stock Yards, joined in a similar intervening petition, but without specification of particular shipments of cattle. They, also, and on the theory advanced in the petition of Keenan, asked that appellants be ordered, in default of appropriate delivery appliances on their line of road in Chicago, to move cars containing cattle consigned to any one of the several petitioners, to the Union Stock Yards and there unload and deliver the same without extra charge for so doing.

Appellants answered each petition and from such answers and a stipulation made by the parties, the facts appear substantially as herein above given.

Section 6 of the Interstate Commerce Law, enacted February 4, 1887, as amended March 2, 1889, contains the following provisions:

> "SEC. 6. That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges

for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route.

"The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates and fares and charges.

"Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation in such form that they shall be accessible to the public and can be conveniently inspected."

In the month of June, 1894, appellants duly published and posted in connection with their schedule of rates—which up to that time showed twenty-three and a half cents (23½c.) per hundred weight to be the freight charge on cattle from Kansas City to Chicago—the following:

"On and after July 9, 1894, a terminal charge of $2 per car will be made in addition to the Chicago rates, as shown in the tariffs of the Western Freight association, on Live Stock and other Freight received from or delivered to the Stock Yards, or industries located on the tracks of the Union Stock Yards Railway, the Indiana State Line Railway, and $3 per car on shipments received from or delivered to the Northern Indiana Railroad at Hammond."

Pursuant to this announcement—and no question seems to be made of any default in complying with the Statute, or any want of knowledge of the foregoing announcement on the part of any petitioner—appellants exacted the Two Dollar charge in question. It may be here added that prior to June 1st, 1894, the Union Stock Yards & Transit Company permitted appellants and other carriers of cattle by rail to move cars over its tracks to the Union Stock Yards and there unload into its yards and return, without charge. On the day last named said Union Stock Yards & Transit Company commenced and thereafter continued to make a charge against such carriers of from Eighty Cents (80c) to a Dollar and a Half ($1.50) per car.

SHOWALTER, *Circuit Judge*, after making the foregoing statement, delivered the opinion of the Court:

In the recital in Keenan's Way-Bill, "to be delivered at Chicago station at rate of tariff," which is otherwise in print, the word "Chicago" was evidently written on a space left blank by the printer. This was done at Kansas City. It is obivious from the showing of the record that cattle consigned to Keenan were not, within his understanding, to be unloaded and delivered at any station in Chicago on appellants' line of road. The cattle were to be taken to the Union Stock Yards where Keenan did business. The case of the two cars mentioned in said Way-Bill is nowise different, as affecting the matter in controversy, to what it would be if no such paper had been subscribed.

In Covington Stock Yards Company v. Keith, 139 U. S., 128, a bill had been filed by Bliss and Gates against the Kentucky Central Railroad Company to foreclose a mortgage on the railroad property of the defendant. Receivers had been appointed, and at the time of the controversy the suit was pending and the Receivers were in possession of and operating the defendant's road. On the 18th of June, 1886, Keith filed in the cause his intervening petition making the Receivers the parties defendant. Prior to the commencement of the foreclosure suit and on November 19th, 1881, the defendant Railroad Company had contracted with the Covington Stock Yards Company, whose cattle yards adjoined the railroad track and were, or were to be, provided with appropriate platforms, chutes, feeding-pens and enclosures, for the loading and unloading and delivery of cattle. By this contract said yards became the Railroad Company's "depot for delivery of all its live stock," and it was not to build or "allow to be built on its right-of-way any other depot or yards for the reception of live stock." The Covington Stock Yards Company was to perform for the Railroad Company the service of loading and unloading cattle and to collect therefor a charge from all shippers and consignees not to exceed Sixty Cents (60c) per car-load, and account to the Railroad Company for the same. Said Stock Yards Company was also to feed and care for all cattle brought to the yards pending transfer to the cars or delivery to consignees. For this a reasonable charge was to be collected and turned over to the Railroad Company—and for all these instrumentalities and services the latter company was to pay the former a certain compensation.

Keith was the owner of appropriately constructed cattle-yards separated by the width of a street from the yards of the Covington Stock Yards Company and adjoining the switch-track of the Rail-

road Company. He had constructed or provided, apparently by the license of the Railroad Company, express or implied, platforms, chutes and enclosures connecting his yards with said track. For a time subsequent to March 1st, 1886, all cattle consigned to Keith, or his firm Keith and Wilson, who were dealers in cattle on commission, were unloaded into Keith's cattle yards, but prior to the 18th of June, 1886, the Receivers caused Keith's appliances for loading and unloading to be removed from their track. Keith was thereafter compelled to accept delivery of cattle consigned to his firm through the yards of the Covington Stock Yards Company and was thus obliged to pay Sixty Cents per car for a service which, without inconvenience either to the pubic or the Railroad Company, he was prepared to dispense with—hence his intervening petition. The Court ordered the Receivers, in the event that they or their agent in that behalf, the Covington Stock Yards Company, should choose not to permit Keith thereafter to take his cattle through their yards without the Sixty Cents charge, to allow him to replace his platforms and chutes, and to unload and deliver to him thereat—he, or some agent employed by him, being then present to take charge of such cattle—all cattle consigned to him or to his yards. This ruling was affirmed by the Supreme Court of the United States.

As incidental to its business of transporting or hauling cattle, a Railroad Company must provide the means of loading, unloading and caring for such freight pending its delivery to the consignee. The hauling the cattle from one point to another and the providing the car, track, engine and servants for that purpose is no more a part of the service rendered by the carrier than is the loading and unloading and the providing the appliances and servants for those purposes. Nor, in the nature of things, is there any reason why, if the public convenience be subserved thereby, the compensation may not be apportioned so that so much may be paid for the loading and the hauling and so much for the unloading and the care of the animals pending delivery.

It was not necessarily a hardship or wrong as against the ordinary consignee at Covington that he pay the charge of Sixty Cents per car for unloading, etc., to the agent in charge of the stock yards there. Such charge ought, of course, to be specified, as now provided by the Interstate Commerce Law, in connection with the tariff schedule in order that the shipper may be advised of the same. The question whether a person to whom cattle were consigned for delivery at the Covington Stock Yards could have resisted the charge of Sixty Cents per car, was not before the Court in the Keith case, nor could the

Court have ruled in the affirmative on such question, assuming due notice to the shipper beforehand, without, in effect, compelling the Railroad Company to perform, for nothing, part of the service comprehended in its obligations as a carrier. Keith's case stood on its own facts. Keith having, without inconvenience, so far as appears, to the public, or to the Railroad Company, and apparently by its permission or the permission of the Receivers, himself provided the facilities and appliances for unloading into his yards cattle consigned to his firm, the Railroad Company or the Receivers representing it on the one hand no longer owed to him, as respected cattle consigned to his yards, the duty of providing such structures and appliances; nor, on the other, was Keith bound to pay the Railroad Company, or its agent in that behalf, the Covington Stock Yards Company, any charge which, on the face of the case, was distinctly a compensation for the performance of such duty. The case of Keith, furthermore, shows the expediency and propriety of separating and apportioning the compensation to the carrier, so that the instrumentalities for, and the service of, unloading need not be paid for when the consignee has no occasion to use said instrumentalities or to exact such service. That decision on its ultimate and essential facts is, that a Railroad Company, when the means for the unloading and delivery of cattle have been provided by the consignee himself at a convenient point on its line of road, may not refuse to make such delivery for the sole and only purpose of compelling such consignee to pay a charge fixed by the Company in response to its obligation to provide the means of unloading for consignees who must, necessarily, require that service.

If Keith's yards had been at some point in Covington, remote from the Kentucky Central track and he had by the license of the Kentucky Central Railroad Company, or the Receivers, extended a track of his own from the Kentucky Central track to his yards and had there equipped a station for unloading, there would have been no obligation on the Railroad Company to Keith or his patrons to provide a depot on its line for the unloading of cattle consigned to his yards, nor could Keith have referred to such supposititious obligation as a reason for resisting compensation to the Railroad Company for the service of moving cattle cars from its line over his track to his yards.

In the case at bar appellants, with their own engines and switching crew, remove the cars laden with cattle from a point on the Chicago end of their line over the track of the Union Stock Yards and Transit Company to the Union Stock Yards. For this transfer from their own line to the Stock

Yards they charge as stated on the tariff schdule, Two Dollars ($2.00) per car. All the petitioners do business at the Union Stock Yards. It is the understanding between them and appellants that cattle cars assigned to them are to be taken to the Union Stock Yards and there unloaded. Upon the general and ordinary obligation of a common carrier of such freights to provide the appliances for unloading, and upon the fact that appellants have not provided means for unloading and delivering cattle at their freight depot in Chicago, petitioners argue, *first:* that the Two Dollars per car is for depot facilities at the Stock Yards, and *second:* that the Stock Yards station must be held to be appellants' "Chicago station" in the same sense as would be the terminal station at Twelfth and State Streets if cattle yards and facilities for unloading were there provided. But the obligation of appellants to furnish delivery facilities upon their line of road in Chicago is not due to these petitioners with respect to cattle which appellants are expected to bring to the Union Stock Yards. Petitioners do not desire their cattle unloaded and delivered at any point in Chicago on appellants' line of road. The Two Dollars per car is not a charge for the use of the enclosures and station fittings at the Stock Yards, but for moving the cars from the line of appellants' road and over the line of another company (which company exacts from appellants a toll of Eighty Cents per car) to a point in Chicago on said last named line. The case is the same as though petitioners themselves owned the Stock Yards and the delivery station there and the tracks leading to said station, and appellants charged them One Dollar and Twenty Cents ($1.20) for transferring a car from appellants' line in Chicago to said Stock Yards station.

If facilities for unloading cattle cars were provided by appellants at their station in Chicago, the showing of the record being otherwise as it is, the fact would be immaterial, since the petitioners' cattle must be taken by appellants to the Union Stock Yards. Appellants' failure to supply unloading facilities at its Chicago terminal station can in no way affect the rights of a litigant who, in view of the question at issue, could in no event have benefited by such facilities.

The learned counsel for appellees treat the Covington case as a pronouncement by the Supreme Court that the Receivers there must forego their Sixty Cents per car and let Keith's cattle be delivered through the Covington Stock Yards unconditionally. On the contrary, the essential and central fact upon which the judgment went, was, as already explained, that Keith's yards adjoined the track and he had, without hurt to the Rail-

road Company or to the public and apparently by the license of the Company, provided the means of unloading into his own yards. He had no occasion to avail himself of the services of, and the instrumentalities provided by, the Covington Stock Yards Company, the concern which had assumed, to that extent, the duty of the carrier. Hence the order that his cattle must either be unloaded into his own yards or else passed free of charge through the yards controlled by the Covington Stock Yards Company for the railroad. If the rule of law had been as counsel for these appellees contend, then the order would have been that Keith's cattle be unloaded free of charge into the yards used by the Railroad Company without any alternative. The alternative implies that, except in the case of Keith, or of a person having cattle yards and unloading facilities in Covington similarly situated with respect to the road operated by the Receivers, the yards provided by the Railroad Company or the receivers as a place of delivery, must be used and the Sixty Cents paid as a proper item in the freight charge. To any assumed rule of law that a carrier could not divide into two or more items his freight charge for carrying live stock so that the instrumentalities for unloading and delivery need not be paid for by consignees who are themselves prepared to receive their cattle directly from the cars, the decision in the Covington case cannot be referred. The opinion states no such rule; nor can any such rule be evolved therefrom consistently with the judgment of the court.

When, as here, the delivery is to be made in Chicago, but at a point away from the carrier's line and by means of a track not owned or possessed by the carrier, the printed schedule of such carrier showing in two items the compensation exacted for the haul to Chicago and that exacted for the transfer in Chicago to the point of delivery, the theory that such carrier is bound by law to unload such freight at a station on its own line in Chicago and that the transfer from its line to a point on the other line for the purpose of delivering at the latter point—being an equivalent or substitute for what ought to have been done pursuant to such supposed obligation—is comprenended in the service of hauling to some station on its line in Chicago, is unsound. One side of the proposed equation is mythical. There is no obligation on the carrier in such a case, and as to such a consignment to unload at a station on its line in Chicago, or to provide unloading or delivery facilities at such station. In the carrier's charge for the haul to any station or point on its line in Chicago, in such a case, there is not comprehended any compensation for unloading at such station or point. The twenty-three and a half cents per hundred weight pays these

appellants for hauling from Kansas City to a station or point on their line in Chicago; the Two Dollars per car pays for the transfer thence to the Stock Yards where the consignees desire the delivery to be made.

The Covington case was prior to the Interstate Commerce Law. Within the express terms of the second paragraph of section 6, quoted in the statement which precedes this opinion, the total compensation to the carrier for his services as carrier may be divided into at least two items. The separation by these appellants of their charge for loading and hauling to Chicago from their charge for transferring from their line in Chicago to a specified point in Chicago away from their line, is authorized by the statute. No satisfactory reason suggests itself against the legality and propriety, under special circumstances such as exist here and as existed in the Covington case, of such a division of his compensation by a carrier even apart from the statute. The learned district judge, who made the order appealed from, evidently understood the opinion in the Covington case to imply that no division of a carrier's charge could be made. If this were the sound construction of that case the statute has changed the rule, as already suggested.

It is not suggested, assuming any such charge as is here in question to be legal at all, that the amount is unreasonable. The contention that the carriers must move cattle from their lines of road over the track of the Stock Yards Company to the stock yards without compensation other than as contained in their charges for hauling to points on their respective lines in Chicago—and this is what the claim of these appellees amounts to—is invalid.

The order appealed from is reversed and the cause remanded, with the direction that said order be vacated and the intervening petitions dismissed for want of equity.

Aldace F. Walker, John J. McCook and Josph C. Wilson, receivers of the Atchison, Topeka and Santa Fe Railroad Company, *Appellants*, vs. Wilson T. Keenan, *et al.*, Intervenors, *Appellees*.	Appeal from the Circuit Court of the United States for the Northern District of Illinois.

275

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Illinois and was argued by counsel.

On consideration whereof; It is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby reversed with costs; and that this cause be and the same is hereby remanded to the said Circuit Court with directions that said order be vacated and the intervening petition dismissed for want of equity.

UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

I, Oliver T. Morton, Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from one to 92, inclusive, contain a true copy of the transcript of the record and the proceedings in the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Aldace F. Walker, *et al.*, Receivers, etc., *vs.* Wilson T. Keenan, *et al.*, Intervenors, No. 275, October Term, 1895, as the same remains upon the files and records of said United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court
[SEAL.] of Appeals, for the Seventh Circuit, at the City of Chicago, this 16th day of May A. D. 1896.

OLIVER T. MORTON,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(64-706)

Office Supreme Court U. S.
FILED.
MAY 23 1896
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1895.

~~1029~~

ALDACE F. WALKER, JOHN J. McCOOK and JOSEPH C. WILSON, Receivers of the Atchison, Topeka and Santa Fe Railroad Company,

Appellants,

vs.

WILSON T. KEENAN et al., Intervenors,

Appellees.

533.

PETITION FOR CERTIORARI.

A. W. GREEN and
HENRY S. ROBBINS,
SOLICITORS FOR PETITIONERS.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

ALDACE F. WALKER, JOHN J. McCOOK and JOSEPH C. WILSON, Receivers of the Atchison, Topeka and Santa Fe Railroad Company,

Appellants,

vs.

WILSON T. KEENAN et al., Intervenors,

Appellees.

PETITION FOR CERTIORARI.

TO THE HONORABLE THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, Wilson T. Keenan, Doud & Keefer, W. L. Tanblyn, George W. Shannon, M. P. Buel; Simon O'Donnell, Rappel, Lamb & Co., Wood Bros., Campbell Commission Company, L. A. McCoy, Brown, Beel & Ballinger, H. B. Steck & Co., Gregory & Hastings, Brown St. John Company, John S. Alexander & Co., John Adams & Son, C. A. Mallory, Martin Bros., Chicago Live Stock Commission Company, Texas Live Stock Commission Company, Dailey Taylor & Co., W. H. Thompson, Jr., McCreal and Haag & Co., Reynolds, Wescott & Co., Conover & Herrick, Ingeverson Bros. &

Smith, Byers, Moore & Byers, C. L. Shattuck & Co., Wagner Bros., & Co., J. H. Wood, Martin Horn & Younge, Dickson & Lott, Green, Mills & Co., Darlington, Smith & Boyden, P. Burns, Godair, Harding & Co., respectfully represent unto your Honors:

That in December, 1893, a suit was instituted in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, by the Union Trust Company of New York against the Atchison, Topeka and Santa Fe Railroad Company to foreclose a mortgage upon its railroad and other property; that upon the filing of said bill, Aldace F. Walker, John J. McCook and Joseph C. Wilson were appointed receivers of the property of said railroad, and entered into possession thereof.

That thereafter, and on the 2d day of November, 1894, your petioner, Wilson T. Keenan, filed in said suit a petition asking said Circuit Court to direct said receivers to deliver to him four carloads of live stock shipped from Kansas City, Missouri, and consigned to said Keenan at Chicago, Illinois, upon which said Keenan had paid or tendered all the freight, but which said receivers refused to deliver to said Keenan without further payment by him of $2 per car claimed by said receivers as switching or terminal charges, and which said petitioner averred to be an illegal and improper exaction, and praying for the delivery by said receivers to said petitioner of said four carloads and all future carloads of live stock without the payment of said $2 per car by said petitioner.

That on November 3, 1894, Doud & Keefer and said other petitioners above named also filed a petition in said suit and in said court, averring that they were dealers in live stock at said City of Chicago; that said receivers claimed the right to exact said charge of $2 in addition

to freight on all carloads of freight consigned to them at said City of Chicago, claiming that said charge was illegal, and asking said court to direct the said receivers to thereafter discontinue the collecting of said charge of $2 per car upon carloads of freight so consigned to said petitioners.

That to said two petitions the said receivers interposed answers, and such proceedings were thereafter had that said Circuit Court entered an order directing said receivers to deliver said four carloads of live stock to said Keenan without exacting said $2 per car, and thereafter to discontinue the imposition of said charge of $2 per car and deliver all carloads of live stock without collecting said $2 per car in addition to the regular freight rate.

That from said order of said Circuit Court said receivers prosecuted an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, which court on the 4th day of May, 1896, reversed said order of said Circuit Court and adjudged said charge of $2 per car to be legal.

That your petitioners are advised by counsel and believe that such decision of said Court of Appeals is contrary to the principle laid down by this court in the case of *Covington Stock Yards Co.* v. *Keith*, 139 U. S., 128, and that the question decided by said Court of Appeals and involved in said cause is of such gravity and importance that the same should be considered and revised by this court by a *certiorari* to said Circuit Court of Appeals.

That not only the railroad of which appellants are receivers, but all the other railroads running into Chicago are now exacting said $2 per car on all carloads of live

stock brought by them to Chicago, and will continue so to do if said decision of said Circuit Court of Appeals is allowed to stand, and that the decision of said Circuit Court of Appeals in favor of the legality of said charge of $2 per car will very seriously affect the large live stock business of Chicago and the territory tributary thereto.

That the decision of said Circuit Court of Appeals to the effect that the charge for freight need not be a single item, but may be subdivided into a number of items for parts of the one entire service of transportation establishes a principle which will be vicious in operation and far reaching in its consequences.

That your petitioners present herewith and make a part of this petition a certified copy of the transcript of the record of said cause in said Circuit Court of Appeals.

Wherefore your petitioners pray that this court issue a writ of *certiorari* to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that court to certify to this court the record of its proceedings in said cause.

WILSON T. KEENAN,
DOWD & KEEFER,
W. L. TAMBLYN *et al.*,
Petitioners,

By A. W. GREEN and
HENRY S. ROBBINS,
Their Solicitors.

HENRY S. ROBBINS,
Of Counsel.

STATE OF ILLINOIS,
NORTHERN DISTRICT OF ILLINOIS. } ss.

Wilson T. Keenan, being duly sworn, says that he is one of said petitioners named in the foregoing petition; that he has read said petition, and knows the contents thereof, and that the same is true in substance and in fact, except as to the matters which are therein stated to be on information and belief, and as to those matters he believes the same to be true.

WILSON T. KEENAN.

Subscribed and sworn to before me, this 21st day of May, 1896.

WILLIAM C. GILBERT,

[NOTARIAL SEAL.] *Notary Public.*

164-706

Office Supreme Court U. S.
FILED.
MAY 23 1896
JAMES H. McKENNEY,
CLERK.

164-706

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1895.

~~1020~~

533.

ALDACE F. WALKER, JOHN J. McCOOK and JOSEPH C. WILSON, Receivers of The Atchison, Topeka and Santa Fe Railroad Company,

Appellants,

vs.

WILSON T. KEENAN et al., Intervenors

Appellees.

Petition for Certiorari.

BRIEF ON MOTION FOR CERTIORARI.

A. W. GREEN,
HENRY S. ROBBINS,
Solicitors for Petitioners.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM A. D. 1895.

ALDACE F. WALKER, JOHN J. McCOOK and JOSEPH C. WILSON, Receivers of The Atchison, Topeka and Santa Fe Railroad Company,
Appellants,

vs.

WILSON T. KEENAN et al., Intervenors
Appellees.

Petition for Certiorari.

BRIEF ON MOTION FOR CERTIORARI.

This is a motion for a *certiorari* to bring up from the Circuit Court of Appeals of the Seventh Circuit a record wherein that court decided in favor of the legality of a so-called terminal charge of $2 per car, in addition to their regular freight charges imposed by the railroads of Chicago upon all carloads of live stock shipped over their roads to that city.

Counsel for this motion fully appreciate that a *certiorari* issues only to review a question of gravity and importance. It is thought this case meets that requirement.

The appellants, prior to June 1, 1894, transported carloads of live stock from Kansas City to the stock yards at Chicago for 23½ cents per cwt. Since that date they have insisted upon collecting for identically the same service (including delivery at the same stock yards), 23 cents per cwt., and $2 per car as "terminal charges."

The specific question involved in this record is whether in shipments of live stock *to Chicago*, the carrier is obliged to there furnish without charge (other than the one charge for freight), depot facilities for the safe and convenient delivery of such stock. In other words, that question is whether upon carloads of live stock shipped from outside points to Chicago the carrier may add to the general freight rate $2 per car for hauling from the carrier's own line in Chicago (upon which it furnishes no live stock depot), to independent stock yards in said city where delivery facilities do exist, which are, and have been always treated by the carrier as, its delivery depot for live stock.

An underlying question is whether a carrier, under the law, is confined to one freight charge to include all parts of the transportation service, or may divide the charge by fixing one sum for loading, one or more sums for transportation, or parts thereof, and one or more additional sums for the different services which go to make up a delivery.

While these questions have by the Circuit Court of Appeals been decided adversely to these petitioners, is is confidently claimed that such decision is directly contrary to that of this court in the case of *Covington Stock Yards Co.* v. *Keith*, 139 U. S., 138. This being so, the question presented by this application is whether the large live

stock interests in and tributary to the City of Chicago shall have the benefit of that decision of this court.

The gravity and importance of this question arises from the fact that it affects the entire live stock business of Chicago and the country tributary thereto. While but one road is connected with this record, all the railroads entering Chicago claim and exercise the same right to exact this $2 per car in addition to the regular freight. This has an injurious effect much beyond the money involved, which itself amounts to a very large sum annually.

But the decision is even more far reaching than this. According to this Circuit Court of Appeals, railroads within the Seventh circuit may, in posting and collecting their regular freight rates under the Interstate Commerce law, lawfully subdivide them into different items; for instance, one charge may be fixed and posted for the service involved in the receipt or loading of freight; another charge may be exacted and posted for the service comprised in the transportation of the freight from the point of receipt to the point of delivery; if in that transfer the freight is carried across a bridge owned by an independent bridge company a separate charge may, according to the Court of Appeals, we apprehend, be imposed for that; when the freight reaches its destination an additional and separate charge may be exacted and posted for the service of delivery.

The question thus decided affects the entire railroad transportation of the largest railroad center of this country. It is not confined to live stock, but embraces all classes of freight. It thus becomes a question of grave importance to the entire business interests of the territory comprised within the Seventh circuit.

Again, it is a question of gravity and importance in that the Circuit Court of Appeals, as we believe, has refused to follow and give effect to a decision of this court. By the judgment of that court all suitors in the Federal courts of that circuit are denied the benefit of the rule of law laid down by this court in the *Covington case*. Whenever such an occasion arises, it is believed that a case is presented for the issuance of the writ of *certiorari*.

Statement of Case.

In December, 1893, upon a bill filed by the Union Trust Company of New York, in the United States Circuit Court for the Northern district of Illinois, against the Atchison, Topeka & Santa Fe Railroad Company to foreclose a mortgage upon its property, appellants were appointed receivers and entered into possession and operation of said railroad.

In November, 1894, two intervening petitions were filed in said suit, one by appellee Wilson T. Keenan, the other by appellees Doud & Keefer and thirty-four individuals, firms and corporations. All of these petitioners, as shown by the petitions, are dealers in, or commission merchants of, live stock at the City of Chicago, and from time to time receive live stock shipped to them at Chicago from various points on the lines of appellants' road.

The Keenan petition alleged that Patton & Martin delivered to the proper agents of the appellants at Kansas City for transportation to Chicago, four carloads of cattle, which were duly accepted by said agents, under an agreement that they should be transported from Kansas City to appellants' *Chicago station*. Covering two of these shipments written contracts were entered into which appear in the record at pages 65–70. These contracts specifically provide for delivery at appellants' "*Chicago station.*" And, as to the other two carloads, appellants' answer (Rec., p. 23) admits that the contract of shipment contemplated transportation over appellants' road from Kansas City to *Chicago.*

At the time of these shipments, the established and published rate for the transportation of cattle in carload lots, from Kansas City to Chicago was 23½ cents per hundred weight, and the amount of freight on these four carloads demanded by appellants' agents at Kansas City was paid at the time of such shipment. Upon the arrival of these four cars at Chicago, an additional sum was claimed for feed, etc., of cattle in transit, and by reason of the weight being in excess of that upon which freight was figured at Kansas City. These amounts were also tendered by Keenan to appellants' agents at Chicago, but delivery to him was refused until he should also pay an additional "terminal charge" of $2 per car. This Keenan declined to pay, on the ground that such charge was illegal, and his petition sought the delivery of his cattle without payment of this $8.

The second petition of Doud & Keefer and others does not, like that of Keenan, present a case of specific shipments, but proceeds upon the theory that the imposition of this $2 terminal charge is illegal and results in diverting shipments of live stock away from the Chicago market and in consequent injury to petitioners' business. It prayed that said receivers be ordered to provide at the City of Chicago suitable yards and pens for safely unloading live stock, and in default thereof and until they should do so that said receivers should deliver all live stock consigned to petitioners at the City of Chicago at the existing yards of the Union Stock Yards Company without exacting payment of said $2 per car. A similar prayer as to future consignment was included in the Keenan petition.

Except in the particulars above indicated, the two petitions are practically identical in their averments.

They both aver, and the appellants' answers admit, that for many years a corporation known as the Union Stock Yard and Transit Company has owned and maintained in the southern portion of the City of Chicago an elaborate system of stock yards for the receipt, custody and delivery of live stock shipped to the Chicago market, such stock yards including all the pens, chutes, platforms and yards necessary for the convenient and proper receiving, shipping, storing and delivery of live stock, and that said Stock Yard Company has always owned and maintained railroad tracks connecting said stock yards with the tracks of the various railroads entering Chicago; that since the establishment of these stock yards such railroads have delivered at said stock yards practically all, the live stock transported to Chicago over their several lines; that, when the Atchison, Topeka and Santa Fe Railroad extended its line to Chicago, finding such stock yards fully equipped with the facilities for the care and delivery of live stock, it connected its road with said connecting tracks of said Stock Yard and Transit Company, and that said railroad company and the present receivers (since their appointment) have always availed themselves of these facilities as to practically all the live stock shipped to Chicago over the road of the Atchison, Topeka and Santa Fe Railroad Company.

Under the arrangements which have prevailed between the Stock Yard Company and the different railroads, the Stock Yard Company has nothing to do with the transportation of the stock from the junction of the various roads to the stock yards, but the various roads with their own engines transport their shipments of live stock in their own cars to the yards, chutes and platforms of the Stock Yard Company. (Rec., pp. 28–30 and 71.)

It is also averred in the petitions and admitted in the answers, that prior to June 1, 1894, no "terminal charge" or other charge in addition to the freight was imposed by appellants or any other railroad entering Chicago for transportation from the lines of said railroad companies over the said connecting tracks of said Stock Yard Company to said stock yards. On that day the appellants (and the other roads) commenced to impose a charge of $2 per car of live stock, calling it a "terminal charge." The reason given for the imposition of this charge is, that on that date the Union Stock Yard and Transit Company, which, prior to June 1, 1894, had made no charge to any of the railroad companies for the use of its connecting tracks, commenced to charge appellants and the other roads for the use of said tracks, such trackage charge to appellants amounting to 80 cents per car, including the return of the car.

The only material conflict between the petitions and answers arises upon the allegations respecting the nature and extent of the existing depot facilities of appellants in the City of Chicago for the receipt and delivery of live stock. But these conflicting averments were harmonized and rendered unimportant by a stipulation made upon the hearing of this cause (Rec., p. 71), which, so far as material, is hereinafter set out.

Upon the hearing of the petitions the Circuit Court (Judge GROSSCUP) entered an order as follows:

"The court doth find, that the Chicago station of the defendant railroad company and its receivers for the delivery of live stock heretofore has been and now is the Union Stock Yards in said City of Chicago; that the imposition of a terminal charge, in addition to the freight rate, for delivery of live stock at said Chicago station is illegal; therefore,

It is ordered, that the receivers herein forthwith deliver to said Wilson T. Keenan the said four carloads of live stock mentioned in his said petition, upon his payment to said receivers or their agents of the sums averred in said petition to have been tendered to the agents of said receivers, and without exacting from said Keenan the said terminal charge of two dollars per car.

And it is further ordered, that the said receivers, until the further order of this court, discontinue the charging of any *terminal* charge upon any live stock shipped over the line of said defendant to said Chicago, in addition to the freight between said point of shipment and said Chicago; and that the said receivers do henceforth, until the further order of this court, deliver all live stock consigned over said line of railroad to said Chicago at the Union Stock Yards in said City of Chicago, without exacting any terminal charge for delivery of same at said Union Stock Yards in addition to said freight rate.

But nothing in this order shall be construed to interfere with the right of said receivers of said defendant to change its freight rates or from establishing in good faith any depot in Chicago other than at said Union Stock Yards for the delivery of live stock."

This order the Circuit Court of Appeals reversed, and directed the intervening petitions to be dismissed for want of equity.

I.

THIS DECISION OF THE COURT OF APPEALS IS IN DIRECT OPPOSITION TO THE DECISION OF THIS COURT IN THE COVINGTON CASE.

The right of appellants to fix their freight rates for live stock within reasonable limits is not denied by appellees. Had they been content to do this the appellees would not be in any position to question it.

Nor is it contended by appellees that a railroad is re-

quired by law to transport freight beyond its own line without charge. How far a railroad must accept freight consigned beyond its terminus and what charges it may make for doing so, are questions entirely foreign to the real controversy upon this appeal.

Nor does this case involve the question of a railroad's right to impose a switching charge where the consignee desires a delivery, not at the railroad company's regular depot for delivery, but at some other point along its line better suited to the convenience of such customer. In such a case, switching charges are admittedly legal. The obligation of the railroad company is to furnish one depot for delivery for the public at large. If an individual desires more than this he must pay for it. Such charge would be what the law recognizes as a legitimate "terminal" or "switching" charge.

If, instead of making the Union Stock Yards their live stock depot, as they have done, the appellants furnished at any point along their line of road within the city limits of Chicago adequate depot facilities for the delivery of live stock consigned to Chicago over their line, it would be admitted that appellees could not insist upon delivery of live stock either at the Union Stock Yards, or at any point other than such regular depot.

The real questions of this case are these: The appellants hold themselves out as common carriers of live stock. A shipper tenders them, say at Kansas City, carloads of live stock to be transported to Chicago. As a common carrier, the appellants are by law required to accept these shipments, transport them to Chicago, and *there deliver them to the consignee.* In Keenan's case the appellants, recognizing this legal duty, accepted his shipments, and entered into contracts (as to

two of them, in writing) whereby they *agreed* to transport his cattle to their "Chicago station." The freight charges based upon the established rate are paid or tendered. In such case, what is the nature and extent of the service which the carrier is obliged to render?

Is he required not only to transport to Chicago, but to furnish at Chicago, *without additional charge*, adequate depot facilities for the delivery of such live stock?

Have the appellants any such depot except at the Union Stock Yards?

These questions are fully and conclusively answered by this court in

Covington Stock Yards Company v. *Keith*, 139 U. S., 128.

In that case the railroad had itself at Covington no depot facilities for the delivery of live stock consigned to parties in that city. In lieu thereof, it had contracted with a stock yards company adjoining its line in the City of Covington, and having such facilities, "that it would make the yards of the stock yards company its 'depot for delivery of all its live stock' during the term of the contract, and not 'build or allow to be built on its right of way any other depot or yards for the reception of live stock,'" under which contract the Stock Yards Company exacted a charge from all shippers or consignees for the use of such depot or delivery facilities. In other words, the common carrier in that case acted upon the assumption that by the payment to it of freight for the transportation of live stock to Covington, it was not obliged *without further charge* to furnish also depot facilities for delivery.

Accordingly the railroad company agreed with the

Stock Yards Company not to furnish those facilities itself, but to give the Stock Yards Company the exclusive right to furnish such facilities and to *charge therefor*. If the railroad itself had the right to make this additional charge for delivery facilities, it was of course plain that it could farm out or sub-let that privilege to the Stock Yards Company.

On the other hand, if the service required of the railroad company in return for its *freight charge* included adequate delivery facilities, and no additional charge could be made therefor by the railroad company itself, it was also plain that it could not, by contracting with the Stock Yards Company to furnish these facilities, confer upon that company any right to charge the consignees of freight for such service. It could not confer upon the Stock Yards Company what it did not itself have. It could not in this indirect way escape the rendering of the service which the law required of it.

The real question of law, then, in the Covington case was, whether in consignments to that city the one freight charge included not only the transportation but the furnishing of adequate facilities for delivery at Covington. In favor of the affirmative of this proposition the decision is clear and emphatic. By the decree of the lower court (which the court affirmed) it was found, ordered and decreed as follows:

"It is the duty and legal obligation of the Kentucky Central Railroad Company, as a common carrier of live stock, to provide suitable and convenient means and facilities for receiving on board its cars all live stock offered for shipment over its road and its connections from the City of Covington, and for the discharge from its cars of all live stock brought over its road to said City of Covington, *free of any charge other than the customary transportation charges to consignors and consignees.*"

And it being found by the court that the railroad company had no adequate facilities in Covington for the delivery of live stock, the receivers of the railroad company in that case were ordered to deliver complainant's stock through the regular stock yards *free of charge*, or, if the Stock Yards Company would not assent to this, then that such receivers should deliver complainant's live stock at complainant's own yards, which adjoined the railroad tracks.

Mr. Justice HARLAN, in affirming the decree, said (p. 133):

"The railroad company, holding itself out as a carrier of live stock, was under a legal obligation, arising out of the nature of its employment, to provide suitable and necessary means and facilities for receiving live stock offered to it for shipment over its road and connections, as well as for discharging such stock after it reaches the place to which it is consigned. * * *

When animals are offered to a carrier of live stock to be transported, it is its duty to receive them; and that duty cannot be efficiently discharged, at least in a town or city, without the aid of yards in which the stock offered for shipment can be received and handled with safety and without inconvenience to the public while being loaded upon the cars in which they are to be transported. So, when live stock reach the place to which they are consigned, it is the duty of the carrier to deliver them to the consignee; and such delivery cannot be safely or effectively made except in or through inclosed yards or lots, convenient to the place of unloading. In other words, the duty to receive, transport and deliver live stock will not be fully discharged unless the carrier makes such provision at the place of loading as will enable it to properly receive and load the stock, and such provision at the place of unloading as will enable it to properly deliver the stock of the consignee. * * *

The carrier must at all times be in proper condition both to receive from the shipper and to deliver to the consignee, according to the nature of the property to be

transported, as well as to the necessities of the respective localities in which it is received and delivered. A carrier of live stock has no more right to make a special charge for merely receiving or merely delivering such stock, in and through stock yards provided by itself, in order that it may properly receive and load, or unload and deliver such stock, than a carrier of passengers may make a special charge for the use of its passenger depot by passengers when proceeding to or coming from its trains, or than a carrier may charge the shipper for the use of its general freight depot in merely delivering his goods for shipment, or the consignee of such goods for its use in merely receiving them there within a reasonable time after they are unloaded from the cars. If the carrier may not make such special charges in respect to stock yards which itself owns, maintains or controls, it cannot invest another corporation or company with authority to impose burdens of that kind upon shippers and consignees. The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee, if to be found, at such place as admits of their being safely taken into possession. * * *

It was not within the power of the railroad company, by such an agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for services it was bound to render without any other compensation than the customary charges for transportation."

We are at a loss to perceive by what language this court could have more clearly decided that the one charge for freight must include the entire service from its delivery to the carrier at the point of shipment to its delivery by the carrier to the consignee at the point of destination, and that no separate and additional charge could be exacted for the furnishing of depot facilities, or any part of such entire service.

It will be observed that this Covington case does not deal with specific or existing shipments, but that the de-

cree therein provided for the delivery of all future shipments. Hence, the case does not turn upon the question of *contract*, but deals with the *legal duty* of the common carrier (regardless of the contract of the parties) to furnish delivery facilities without charges in addition to freight.

While the scope and principle of this decision seems to us plain and unmistakable, the Circuit Court of Appeals has clearly misunderstood it. Thus, notwithstanding the clear language of Mr. Justice Harlan, that court says the *Covington* case must be held to apply only to a consignee who has his own yards adjoining the carrier's tracks, and not to "the ordinary consignee at Covington," to whom it is not an illegal "hardship or wrong * * * that he pay the charge of 60 cents per car for unloading"; that this court could not "have ruled in the affirmative on such question, assuming due notice to the shipper beforehand without in effect compelling the railroad company to perform for nothing part of the service comprehended in its obligations as a carrier," and that Keith (the consignee in that case), was not obliged to pay the 60 cents per car for depot facilities because he furnished his own, and "had no occasion to avail himself of the service of and the instrumentalities provided by the Covington Stock Yards Company, the concern which had assumed to that extent the duty of the carrier"; but that other consignees not having their own yards must, in addition to freight, pay such 60 cents for delivery.

This is a clear misconception of the grounds of the decision in the Covington case.

This court doubtless did not put the decision upon the ground assumed by the Court of Appeals, because it would have been imposing on a railroad company the ob-

ligation to deliver freight without additional charge at points in Covington other than the carrier's regular depot. This would have been contrary to the law which recognizes the legality of switching or terminal charges where the consignee desires delivery, not at the regular depot of the carrier, but at some other point along its line within the city of destination.

Again, if this court desired to place its decision upon the ground (assumed by the Circuit Court of Appeals) that the carrier was exacting from Keith pay for something he did not desire or get, what necessity was there for the discussion by this court of the general duty of the carrier of live stock respecting delivery?

According to the Circuit Court of Appeals there was no such duty in favor of the ordinary consignee at Covington unless he paid 60 cents per car therefor. Yet this court in the Covington case stated as a general proposition applicable to all consignees that the transportation service includes delivery facilities for stock at the point of destination "free of any charge other than the customary transportation charges."

What else could this court mean in using the following:

"In other words, the duty to receive, transport and deliver live stock would not be fully discharged unless the carrier makes such provision at the place of loading as will enable it to properly receive and load the stock, and such provision at the place of unloading as will enable it to properly deliver the stock to the consignee. * * * A carrier of live stock has no more right to make a special charge for merely receiving or merely delivering such stock in and through stock yards provided by itself in order that it may properly receive and load or unload and deliver such stock, than a carrier of passengers may make a special charge for the use of its passenger depot by passengers when proceeding to or coming from its trains,

or than a carrier may charge the shipper for the use of its general freight depot in merely delivering his goods for shipment, etc."

How is this language to be reconciled with the position of the Circuit Court of Appeals that the carrier may make such special charge the consignee has not his own depot facilities?

The decree affirmed in the *Covington* case is based upon the proposition that the general freight depot of the railroad in the City of Covington was not suitable for the delivery of live stock; but if the Circuit Court of Appeals is right in saying that that decision proceeds upon the proposition that the particular consignee there offered to furnish his own delivery facilities, of what importance was it whether the railroad had for ordinary consignees adequate facilities of its own or not, and why did Mr. Justice Harlan feel called upon, as he did, to consider what constituted such adequate delivery facilities? This, upon the theory of the Circuit Court of Appeals, was wholly immaterial to the decision.

The misconception by the Circuit Court of Appeals of the *Covington* case becomes more apparent when it deals with the alternative order entered in that case. If the consignee there was, as claimed by the Circuit Court of Appeals, entitled to free delivery because he had his own yards, the order or decree in the *Covington* case should have provided unconditionally for delivery at such yards. But the decree in that case which this court affirmed, did not direct the carrier to deliver all consignments to Keith at his own yards, but did primarily order delivery through the general stock yards free of charge. If those yards had be-

longed to the carrier, the order would have stopped here. They did not, but were the property of an independent stock yards company which owed no duty to the public. Under its contract with the carrier it had the right to charge for all stock delivered through its yards. It was for this reason that the decree had to be drawn in the alternative by providing that, if this independent stock yards company did not consent to delivery through its yards without charge, the carrier should then deliver to Keith's private yards without charge, having no yards of its own for such delivery.

In other words, the court did not, and could not, undertake to control the railroad company in the selection of its place of delivery. It had selected as its own stock depot the yards of an independent company, and had contracted with that company for delivery through such yards. If the railroad company, with the concurrence of the Stock Yards Company, was willing to perform its full legal duty by delivering through such yards without charge, it had the right to do so. It was only in case the carrier refused to do this that the court could direct delivery elsewhere. Hence the reason for the decree in the alternative.

If the Circuit Court of Appeals is right, then the alternative decree was not only unnecessary but improper.

That court clearly misconceives the purpose and necessity for that alternative decree when it says:

"If the rule of law had been as counsel for these appellees contend, then the order would have been that Keith's cattle be unloaded free of charge into the yards used by the railroad company without any alternative; the alternative implies that except in a case of Keith or of a person having cattle yards and unloading facilities in Covington similarly situated, with respect to the road op-

erated by the receivers, the yards provided by the railroad company or the receivers as a place of delivery must be used, and the 60 cents paid as a proper item in the freight charge."

The real reason for the alternative decree in that case is brought out in the opinion of this court as follows:

"So far as the record discloses, the yards maintained by the appellants [the independent stock yards company] are, for the purposes just stated, equal to all the needs, at that city, of shippers and consignees of live stock; and if the appellee had been permitted to use them, without extra charge for mere 'yardage', *they would have been without just ground of complaint in that regard;* for it did not concern them whether the railroad company itself maintained stock yards, or employed another company or corporation to supply the facilities for receiving and delivering live stock, it was under obligation to the public to furnish. But as the appellants did not accord to appellee the privileges they were entitled to from its principal, the carrier, and as the carrier did not offer to establish a stock yard of its own for shippers and consignees, the court below did not err in requiring the railroad company and the receiver to receive and deliver live stock from and to the appellees at their own stock yards in the immediate vicinity of appellant's yards, when the former were put in proper condition to be used for that purpose, under such reasonable regulations as the railroad company might establish."

In other words, this court decided that the consignee in that case was entitled to delivery at his own yards *only* in case the carrier did not otherwise furnish free delivery facilities. Yet the Circuit Court of Appeals holds that what this court really intended to decide was that the consignee in that case was entitled to delivery at his own yards *whether the railroad company furnished its own delivery facilities free or not*, and this for the reason that

that consignee was not obliged to use, and therefore was not obliged to pay for, the regular delivery facilities furnished by the carrier.

If the present appellants had no adequate delivery facilities for live stock in the City of Chicago except at the stock yards of the Union Stock Yard and Transit Company, and had made such yards its station for live stock delivery, as the undisputed facts to be hereafter referred to show, wherein does the *Covington* case differ from the case at bar? The appellants are under the same legal obligation to furnish without any charge additional to freight delivery facilities for live stock shipments to Chicago as the railroad company in that case was to furnish such facilities at Covington. In neither case did the railway company or its receivers have delivery yards of their own.

In this case, as in the *Covington* case, it is proposed to make the shipper pay something additional to freight to secure such facilities. The way of doing it differs a little in the two cases, but the result in both cases is the same —an increased charge or expense to the shipper. If the railroad company is prohibited by law from imposing such additional charge upon the shipper, and thus escaping rendering the full extent of its service, it then becomes immaterial what may be the particular manner devised to impose this extra burden or work out this evasion. In the *Covington* case, this was sought to be accomplished by running the cars only alongside the platforms and chutes of the Stock Yards Company, thus compelling the shipper or consignee to receive delivery from the yards of a stock yards company, which the railroad permitted to charge for this service. In the present case the railroad

company and its receivers reach the same result by neglecting to furnish delivery facilities upon their own line, and in lieu thereof selecting as its delivery station for live stock, and running its cars to, the yards of a stock yards company situated in Chicago a half mile or more from their line of railroad, and under the name of "terminal charge," compelling shippers or consignees to pay for delivery facilities a charge additional to freight.

If by law there can be no charge in addition to freight for the use of a station, as in the *Covington* case, then it must be equally the law that there can be in addition to freight no charge for getting to the station. If it is illegal, as plainly decided in the *Covington* case, to make any additional charge for any one part of the entire service of receipt, transportation and delivery of live stock, then it is equally illegal to make such additional charge for any other part or portion of such entire service. The only distinction between that case and this is the fact that there the charge was for depot yardage, and here it is for trackage. Are they not equally parts of one entire service for which the one entire freight charge is paid?

The proposition of the Circuit Court of Appeals decision that the 23½ cents and the $2 are together the freight rate, is in direct opposition to the *Covington* case. It may be reduced to this:

23½ cts. per cwt plus $2 per car the freight from shipping point to Chicago, and is legal as to the $2 per car.

The decision of this court, however, in the *Covington* case is that

23½ cts. per cwt. plus 60 cts. as freight (that is the compensation for the entire transportation service), from

the shipping point to Covington is *illegal* as to the 60 cts. per car.

As already stated, it is not claimed by appellees, nor does the order appealed from provide, that appellants must furnish delivery facilities at the Union Stock Yards. They may select the place of their live stock delivery station anywhere in the City of Chicago, on or off their line of track. If adequate delivery facilities are furnished by them on the line of their railroad, the shipper or consignee must accept delivery there, or pay additional for additional service. But if the carrier, as here, furnishes no such facilities upon its own line, but adopts for the purpose of delivery stock yard facilities at a distance from its line of track, then it makes the tracks by which it reaches such delivery station a part of its own line, and this although it does not itself own those tracks, but pays another company for their use. In such case, the service rendered does not include transportation beyond its own line; and the right of a carrier to charge for services beyond its own line is not involved. Nor is it, as is claimed, a case warranting the imposing of "switching charges."

But the Circuit Court of Appeals holds that, even if the *Covington* case does require but a *single* charge to cover the entire service including delivery, the law has in this particular been changed by section 6 of the Interstate Commerce law which, after requiring the printing and posting of established tariff rates, provides:

"The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the *terminal charges* and any rules or regulations which in any wise change, affect

or determine any part or the aggregate of such aforesaid rates and fares and charges."

This section does not profess to change the law or permit a division of the freight rate. It only provides that the terminal charges shall be separately stated. It does not undertake to determine what are proper terminal charges, and certainly does not undertake to legalize what before that act were not proper terminal charges. All that the statute does is to recognize the existing law authorizing certain terminal charges, as, for instance, switching charges, and provide that these shall be separately specified on the schedules.

The Interstate Commerce act, including this provision, was passed before the decision by this court in the *Covington* case, and we may fairly assume that this court would have referred to that statute if it in any way affected the rule there laid down.

The reasons why the freight rate should all be comprised within one sum are forcibly stated by his Honor, Judge GROSSCUP, in his opinion in this case (Rec., p. 52), where in interpreting the *Covington* case, he said:

"The freight demanded covers the entire service of the carrier from depot to depot. It is in law the compensation not only for the actual carriage, but also for the facilities furnished for loading and unloading. The service is a single one, and the compensation is likewise single. The law will not permit the charge for such single service to be divided. A carrier cannot make up its bill of charges in items, one for loading, one for carriage, one for personal service of attendants and one for delivery, etc. The freight is not an aggregate of separate charges, but a single charge. This policy of the law is not because a particular shipper might not deal with the carrier as intelligently in the case of one method as in the other, but because the public is not so likely to deal in-

telligently with a series of items as with a single freight rate. The shipper may be intelligent or unintelligent, ignorant or educated, accustomed to business or inexperienced in such affairs, deliberate and careful, or hasty or uninquiring; the service of the carrier is for one as well as the other. A single charge presents to him at once the whole problem. A series of charges might confuse him and leave uncertain what in the end the aggregate would be. For illustration, many roads centering in Chicago reach their passenger stations over other lines. Would it be tolerable to permit them to sell tickets from New York or Louisville to Chicago at a single rate, and then impose a further terminal charge at this end of the line? Would such practice be made less intolerable by the fact that the company actually carried the passenger on its own line within the corporate limits, thus fulfilling the letter of the contract, or by the fact that the additional terminal charge was posted along the other rates in the station of departure? The practical objection is that the public generally know or ascertain the locality of the company's station within the city of destination, but in few instances consult the posted passenger rates. If the public did consult the posted rates it would only be confused by a method other than that of a single rate; for travelers do not usually carry pencils and tabs, and the majority would be unable to figure out satisfactorily the results of tabulated statements. The law comes to their rescue by requiring the carrier to name under a single and definite item the cost of its entire undertaking from station to station. It may be admitted that the reasons for a single charge in the case of freight traffic are not so cogent as in that of the carriage of passengers, but they are of the same character and are calculated to safeguard the public against miscalculations and mistakes. Any other rule would expose those who are entitled to the service of the carrier to hardships and injustice that can easily be avoided, and would open up opportunities to dishonest or tricky carriers that should not be tolerated.

The duty of the defendant company in this case, therefore, is to carry live stock offered to it at Kansas City to its station of delivery at Chicago at a single charge, with-

out the imposition of other charges under any name or pretext. This does not exclude additional charges for service beyond the defendant's undertaking, or change the obligation of defendant with respect to goods or stock accepted for delivery at its Chicago station when delivery is made or offered to be made at that station. It sometimes happens that a further service is required. The shipper may not wish his goods delivered at the station, but at some other point in the city reached perhaps over another railroad's tracks, or by some other method of transportation. A terminal charge for this service is proper, because it is not included in the carrier's undertaking as held out to the public generally, and because such additional service to a special shipper without charge would be unfair to his competitors. In such cases the law permits, and the Interstate Commerce act especially recognizes the right of the terminal charge."

The Circuit Court of Appeals treated this case as though it dealt with shipments to the Union Stock Yards at Chicago. It says:

"All the petitioners do business at the Union Stock Yards. It is the understanding between them and appellants that cattle cars consigned to them are to be taken to the Union Stock Yards and there unloaded."

But there are in this record no shipments to the Union Stock Yards and no such understanding. Keenan's specific shipments were from Kansas City to *Chicago*. Two of the cars were covered by a written contract signed by the carrier and shipper, (Rec., pp. 10–12), and this contract specifically provides for delivery at the carrier's *Chicago station*, and it is admitted by the appellants' answer (Rec., p. 23) that the other cars were shipped under a similar contract. This written contract could not be varied by parol, nor is there in this record the slightest evidence to vary it. What then does the Circuit Court of Appeals mean when it speaks of the "understanding" of

the parties being that the delivery was not to be made at the carrier's Chicago station, but at some other point? If the Union Stock Yards is the Chicago station of the carrier, then the contract meant a delivery there. If the Union Stock Yards is not the carrier's Chicago station, then by the plainest construction of this contract the parties to it did *not* understand or intend that there should be a delivery there.

So, too, as to the future shipments, the prayers of the petitions dealt only with live stock consigned to the *City of Chicago* and the order of the Circuit Court, which the Court of Appeals reverses, only deals with live stock shipped to *Chicago*. It only directs:

"That the said receivers, until further order of this court, discontinue the charging of any terminal charge upon any live stock *shipped over the line of said defendant to said Chicago*, in addition to the freight between said point of shipment and said Chicago. * * * But nothing in this order shall be construed to interfere with the right of said receivers * * * from establishing in good faith any depot in Chicago other than at the said Union Stock Yards for the delivery of live stock."

It is difficult to conceive how language could be plainer than this. Yet the Circuit Court of Appeals treats it as if it were an order dealing with consignments of live stock which, according to the understanding of the parties, were to be delivered at the Union Stock Yards. The theory of that court seems to be that because petitioners transact business at the Union Stock Yards they were legally incapable of making a contract for delivery of live stock at any point in the City of Chicago other than the Union Stock Yards.

His Honor Judge GROSSCUP took the broad and correct view of the question arising on this record when he said in his opinion (Rec., p. 51):

"The question is not one of contract between the petitioner and the railway company, but it is a question of right between it and the public. The defendant is a common carrier, and the petitioners are entitled to the same rate that the public can demand. Their particular contract or special knowledge, therefore, is inconsequential, for common carriers are required to serve all alike, and may not exact, even by contract, from one what it cannot rightfully impose upon all. It is a servant of the public, entitled to charge for its services what the law permits, but not allowed to discriminate between shippers, and that, too, irrespective of whether such discrimination is the result of oppression and duress, or of voluntary contract. Stability of business conditions and fairness in business competition require that each man's expense at the hands of the carrier shall be the same as that accorded to all others, no more and no less. And the law will not permit that such equality should ever be disregarded by the carrier or voluntarily waived by the shipper. What charge, then, can the defendant company lawfully impose upon the general public for the transportation of live stock from Kansas City to the stock yards in Chicago?"

The order of the Circuit Court does not provide, nor have the petitioners ever claimed, that future shipments of live stock to Chicago must be delivered at the Union Stock Yards. The right of the carrier to select its station or change the location of it is by the petitioners and by the order conceded. The question before the Circuit Court was what was the then existing live stock station of appellants. What depot had they or their company selected? It was necessary to determine this for the purpose of providing in the order for a place of delivery. This in reality was, under the *Covington* case, the only question in the case.

We now proceed to consider the correctness of the Circuit Court's decision of this question, which is:

II.

WAS APPELLANTS' EXISTING STATION FOR THE DELIVERY OF LIVE STOCK AT CHICAGO THE UNION STOCK YARDS?

The order appealed from finds:

"That the Chicago station of the defendant railroad company and its receivers for the delivery of live stock heretofore has been and now is the Union Stock Yards in said City of Chicago; that the imposition of the terminal charge in addition to the freight rate for delivery of live stock at said Chicago station is illegal."

Judge GROSSCUP in his opinion said:

"Where then, in contemplation of law, is the defendant's station for the delivery of live stock in Chicago? The petitions and the answer and the admissions at the hearing leave me in little doubt that it is and has been for a long time at the stock yards. At no other place have carloads of stock, so far as I am advised, been delivered or unloaded for years. At no other place in Chicago could the company accomplish the delivery of the live stock that comes over its line except by expensive creation of facilities. * * *

I am impressed with the belief that the practice of the defendant has made the stock yards its depot for the delivery of live stock." (Rec., p. 54.)

Is this justified upon this record?

First. Have the appellants any other station in Chicago?

This was claimed by appellants, but is not very strenuously insisted upon. What kind of a station is required in a large city like Chicago for the delivery of live stock? This is fully answered by the *Covington* case, *supra.*

The decree in that case, which this Court affirmed, was in part as follows:

"The court doth further find that the general freight

depot of the said railroad company in the said City of Covington at the terminus of its road between Pike and Eighth streets, is not a suitable or convenient place for the receipt and delivery of live stock brought to the said city or to be shipped therefrom over said road, and neither said railroad company nor said receiver having provided such suitable depot or place therefor, except the yards of said Stock Yards Company, it is now ordered," etc.

And Mr. Justice HARLAN said:

"The vital question in respect to such matters is whether the means and facilities so furnished by the carrier, or by some one in its behalf, are sufficient for the reasonable accommodation of the public. * * *

When live stock reach the place to which they are consigned, it is the duty of the carrier to deliver them to the consignee; *and such delivery cannot be safely or effectively made except in or through enclosed yards or lots, convenient to the place of unloading.*"

How well appellants have met this duty to furnish inclosed yards or lots through which stock can be delivered "without danger or inconvenience to the public," is fully disclosed by the stipulation in this case. It is as follows:

"That the defendant railroad company since the extension of its railroad to Chicago, has had and now has a general freight depot at the corner of State and 12th streets in the City of Chicago, and that there is and always has been at said freight depot a movable chute, upon which, when placed alongside a car, horses and other live stock can walk or be led from such car to the ground, or from the ground to such car. That said freight depot is not constructed with driveways or chutes so that live stock can walk or be driven from the ground or street level to the floor of said freight house (which is on a level with the floor of freight cars) or from said freight house to the said street level; that said freight house is not so constructed that live stock unloaded therein can be there kept or fed until called for by the consignees thereof; that

there are not adjoining or connected with said freight house any enclosed yards or lots into which live stock upon being unloaded from cars can be placed or kept until called for by the consignees thereof; that there are or connected with said freight house no other means for inclosing or feeding carloads of live stock received at said freight house. That live stock, when unloaded at said 12th street freight house by means of said movable chute would be upon land of said defendant which is not separated from said State street or the other railroads in that vicinity by any fence or inclosure." (Rec., p. 71.)

In other words, appellants are in possession of one movable chute down which a horse can be led. But they have no inclosed yards or lots; and if live stock were driven from the car over this movable chute to the ground there are no fences separating the ground upon which they would be turned loose from the railroad tracks in that vicinity or from one of the leading streets in the City of Chicago. The Texas steer when thus unloaded, would enjoy the amplest facilities for "seeing the town," and his enjoyment of urban freedom would probably not be lessened by the injury that he could work upon the unsuspecting citizens who walk the streets.

It is plain that such delivery facilities are not adequate when tested by the rule laid down in the *Covington* case.

Second. Not only have appellants and their railroad company not furnished their own live stock station, but by their course of business they have adopted the yards of the Union Stock Yard and Transit Company as their live stock station in Chicago. This, too, is established by the stipulation, which is as follows:

"That since the extension of said defendant's railroad to Chicago, as its eastern terminus, all the live stock (except as hereinafter stated) transported over the railroad of said defendants and consigned to Chicago has been by said defendant and its receivers, whether there were

any instructions in reference thereto by the consignors or consignees or not, transported to said stock yards of said Union Stock Yard and Transit Co. (the reasons for so transporting and unloading being claimed by respondents on the hearing to be those set out in their answer); and that the number of cars so transported and unloaded at said stock yards has amounted to many thousands of carloads per annum; and that there has been delivered at said 12th street station during said period only a few shipments of life stock per annum, consisting in the main of horses."

"It is also likewise stipulated by counsel for the respondents that upon the arrival of the four cars of cattle mentioned in said Keenan's petition at Chicago, said Keenan gave no directions to the agent of said receivers to transport said cattle to said Union Stock Yards, but that said cars were by said receivers, without such directions from said Keenan, transported to said stock yards of said Union Stock Yards and Transit Company by the agents of said receivers, placed alongside of chutes belonging to said Stock Yards and Transit Company and there unloaded by the agents of said Stock Yards and Transit Company into the pens and inclosed yards there situated and belonging to said Union Stock Yards and Transit Company with the understanding that all the charges of said receivers for transporting and transferring said stock should follow said stock and should be collected by said Stock Yards and Transit Company before it should make delivery of said stock."

In other words, as also shown by the answer, when appellants' company entered Chicago it connected its tracks with those of the Union Stock Yards Company. It selected the yards of that company as its live stock depot, undoubtedly because all its competing roads entering Chicago had previously done so and it was obliged to follow their example to get its share of the traffic.

For years it of its own motion carried all its carloads of live stock consigned to Chicago to these yards and there unloaded them (as it did Keenan's cars) without any instructions from shippers. This it did without charge prior to June 1, 1894. It has never had any stock yards else-

where in Chicago. No shipper of live stock over this railroad has been in a position to compel it to deliver elsewhere in Chicago. After all this the appellants, with the approval of the Circuit Court of Appeals now take the position that the stock yards is not its depot and its customers have no right to so assume; that it has no live stock depot in Chicago and is not obliged to have any because its shippers "understand" (notwithstanding any written contract appellants may make with them) that their live stock will be taken to the Union Stock Yards.

Is not this reasoning in a circle. Under it could not a carrier always evade the *Covington* case and charge extra for depot facilities? Under it any carrier could adopt a freight or passenger station not owned by it and reached by it only over the tracks of another company (such cases actually exist in Chicago) and after giving the public access to it without charge other than the regular freight or passenger rate sufficiently long to make the people "understand" that it was the carrier's station—the carrier could then make an additional terminal charge for the depot upon the ground that such station was reached over the tracks of another road, and that the "understanding" of the shipper or passenger must have been that he or his freight would be taken there, and hence the carrier was not obliged to provide a station of its own at the point of destination. This is the real logic of the decision of the Circuit Court of Appeals. It plainly repudiates the *Covington* case.

It is, therefore, respectfully submitted that this record presents a question of such gravity and importance as entitles the appellees to a writ of *certiorari*.

A. W. Green,
Henry S. Robbins,
Counsel for Appellees.

164-706

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164-706

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1895.

ALDACE F. WALKER, JOHN J. McCOOK and JOSEPH C. WILSON, Receivers of The Atchison, Topeka and Santa Fe Railroad Company,

Appellants,

vs.

WILSON T. KEENAN et al., Intervenors,

Appellees.

Petition for Certiorari.

533.

REPLY BRIEF ON MOTION FOR CERTIORARI.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

ALDACE F. WALKER, JOHN J. McCOOK and JOSEPH C. WILSON, Receivers of The Atchison, Topeka and Santa Fe Railroad Company,
Appellants,
vs.
WILSON T. KEENAN et al., Intervenors,
Appellees.

Petition for Certiorari.

REPLY BRIEF ON MOTION FOR CERTIORARI.

The argument of counsel in opposition to this motion proceeds upon two theories:

First. That the service is one that involves carriage beyond appellants' own line, and requires a service additional to the transportation from Kansas City or other points to *Chicago.* Here it is claimed that the $2 per car is legal as a "terminal charge."

Second. If the only service involved is in reality transportation from outside points to appellants' Chicago station (the Union Stock Yards being at present such station) still appellants could legally charge for this

service a freight rate of, let us say, 23½ cents per cwt. *and* $2 per car. This involves the right of a carrier to split its freight rate into different sums to cover the different parts of the entire service. Here the $2 is claimed to be legal as being a part of the freight rate.

Let us consider these two theories in the order here named.

I.

The first position is based upon the assumption that the Union Stock Yards is not appellants' live stock station at Chicago. Appellants' counsel seem so much impressed with the necessity of establishing this, that they depart from the record to say (Brief, p. 2) that the Atchison, Topeka and Santa Fe Railroad Company established stock yards in the City of Chicago "at the station of Corwith, in said city, where it is ready to make deliveries of cattle to parties who wish deliveries at such point, and yet at no time have intervening petitioners requested a delivery at such yards."

Now, there is nothing whatever in the record upon which to base this statement. Neither the pleadings nor the evidence contain the slightest reference to a live stock station at Corwith.

Appellants in their answer did claim to have a live stock station at 12th street in Chicago. But this so clearly failed to meet the requirements for a live stock station as laid down by this court in the *Covington* case, that Judge Grosscup held delivery of live stock could not be made there, and the Court of Appeals did not make a different finding, but only decided that as against these

appellees, the appellants were not obliged to have such station.

A reference to the facts in this record will show that they had no live stock station at 12th street, because they had one at the Union Stock Yards.

For years prior to June 1, 1894, the Santa Fe Railroad Company (or its receivers) accepted live stock at Kansas City and other points along its line consigned to Chicago, and upon its arrival at destination, delivered the same at the Union Stock Yards free of charge other than freight.

This has been the practice ever since this railroad entered Chicago. When it first came into that city, it found these stock yards in full operation, and all the other railroads delivering their live stock there. It at once connected its line with the tracks leading to these stock yards. It neither constructed nor maintained any live stock depot of its own anywhere else in that city. It had no other place in which it could unload a single carload of herded stock in the manner required by law. Thus of necessity it unloaded practically all its live stock (except a few horses) at these stock yards. (Rec., 28, 29, 71.)

Prior to June, 1894, when a shipper consigned his live stock to Chicago, could he have insisted upon delivery elsewhere in Chicago than at these stock yards? Certainly not. Why? Because this railroad company, having the right to locate its own live stock station, had adopted these stock yards as its station, and the public—whether willingly or not—was obliged to accept these stock yards as this company's Chicago live stock depot.

Before that date this railroad made no claim that by carrying live stock to these stock yards, it was transporting them beyond its own line. It established a general

freight rate, and that freight rate covered the entire transportation service, including delivery at these stock yards. What more could have been done by this railroad to establish these stock yards as its Chicago live stock station?

This being the situation before and up to June 1, 1894, what has been done after this date to make these stock yards not its station? Has this railroad opened to the public any other live stock station in Chicago? No. Its only other freight station (that at 12th street) has remained after this date as it was before—entirely without any facilities for the delivery of herded live stock. Has it since June 1, 1894, ceased to run to these stock yards its cars of live stock consigned *to Chicago?* No. All its live stock consigned to Chicago after June 1, 1894, as well as before, has been carried there regardless of the directions or wishes of the shipper. This was true of Keenan's four cars, expressly consigned as they were, not to the Union Stock Yards, but to the appellant's "Chicago "station." In short, the conditions existing before June 1, 1894, are the same as those existing since that date, with the exception that before that date the railroad company charged for this service, including the delivery at the stock yards, one freight rate, and since that day it charges *for identically the same service* the same freight rate plus $2 per car.

Under this array of facts—from this course of business —no other conclusion can be reached than that announced by Judge Grosscup, that the appellants' railroad had adopted these stock yards as its "Chicago station." What other station could appellants' have meant when in Keenan's contracts they speak of their "Chicago station"? They put their own construction on those words by run-

ning these cars to these stock yards and their unloading them without Keenan's knowledge. Why? Because they had no other place in Chicago where they could unload them.

Counsel say that appellees distinctly admitted in the lower court that it was intended to make delivery at the Union Stock Yards. By this is meant that these Keenan contracts should have contained as a destination the stock yards and not the "Chicago station." There was no such admission. It is not the fact. Keenan's contracts expressly specify, and were intended to specify delivery at appellants' "Chicago station," and with respect to future shipments the order of the Circuit Court dealt only with shipments *to Chicago*. It did not undertake to control shipments to the Union Stock Yards.

Of what materiality is it that appellees have places of business near the stock yards? Cannot persons doing business at these stock yards make contracts requiring deliveries at Chicago? The deliveries were not made, nor were they to be made, at appellees' places of business. Presumably they had places of business near the Union Stock Yards, because it was convenient for them to be near the yards, which appellants and the other railroads of Chicago had adopted as their live stock station.

If appellants should locate its live stock depot at other stock yards in Chicago, doubtless these appellants would for convenience open other places of business near appellants' new depot. But would this prove that such new stock yards were not the live stock depot of appellants? Or that appellees did not intend delivery at appellants' depot?

Besides, as well pointed out by Judge Gross-

cup, the question, although raised by these appellees, is really one between appellants and the public, and is to be solved with reference, not to these appellees, but to the public at large.

The real question then is, as between the public and appellants, had the latter made the Union Stock Yards their depot? If so, it is their depot in the controversy with appellees, wherever appellees' places of business may be.

Counsel on page 6 of their brief quote from the prayer of the petition to show that the appellees are resorting to a subterfuge. It would have been fairer for counsel to have quoted the entire sentence, which is as follows (the italicised part being the part omitted by them):

"*And that an order may be entered herein directing said receivers either to furnish, at said City of Chicago, platforms, chutes, yards, stations and cattle pens suitable for safely unloading, caring for and delivering live stock, and in default thereof, and until said receivers or said defendants shall so provide said platforms, chutes, yards, stations and cattle pens,* the said receivers be directed to deliver all live stock consigned over the lines of said defendant to your petitioners, and other persons receiving consignments of live stock at said City of Chicago, at the yards of the said Union Stock Yards and Transit Company without exacting or collecting from your petitioners or other shippers or receivers of live stock at Chicago, said charge of $2.00 per car or any other sum by way of freight for transporting said live stock from the point of junction of the line of said defendant with said tracks of said Union Stock Yard and Transit Company to the proper unloading chutes of said Stock Yard and Transit Company."

The position of appellees is perfectly plain. The appellants hold themselves out as a carrier of live stock to Chicago. The public, including appellees and those who consign live stock to them, have a right to insist that appellants furnish delivery yards at Chicago. If the Union

Stock Yards are appellants' live stock depot, then appellees will and must accept delivery there. In the past appellants have clearly made the stock yards their depot. In the future neither the public nor appellees can compel appellants to make delivery there. If they do not wish to do this, then let them select their own depot, and the public, including appellees, will accept delivery there. All that they can, and do insist upon, is a depot somewhere, and delivery at that depot without this $2 charge.

This is the practical and substantial effect of the order appealed from, and appellants, as well as the Court of Appeals, utterly fail to point out any error in it. The case is erroneously treated by them as being confined to Keenan's four cars. Appellees in their petitions demand, and are entitled to receive, a future transportation that shall not include carriage beyond appellants' own line. This the Court of Appeals denies them. What the order of the Circuit Court gave appellees was future transportation of live stock to Chicago and delivery there at a station to be provided by appellants without charge other than freight. What the Court of Appeals compels appellees to accept is transportation to Chicago without such delivery facilities, but in lieu thereof a delivery station that costs them $2 per car.

It must be clear, then, that appellants' claim that the $2 per car is for a service in addition to that required of them in transporting to Chicago or is for a carriage beyond appellants' own line, is untenable. The charge of $2 per car is not then legal as a "terminal charge."

It was, however, as a terminal charge only that it was orginally imposed. Up to the time of appellants' answer, they claimed it only as a terminal or switching charge, that is, as something additional to the freight charge.

When, however, the attempt to maintain its legality as a terminal charge failed, because it became too clear for serious controversy that the receivers and their company had made these stock yards their Chicago station, appellants' counsel upon the hearing resorted to the claim that this $2 charge was, and might be legally considered as a part of the freight rate. This brings us to appellants' remaining theory.

II.

The second position is that a carrier has the right to split its freight rate into different sums and impose a charge of $2 per car for transporting its cars from its main line to its freight depot. The right to do this is expressly affirmed by the Court of Appeals, and also by counsel, who say:

"There is no law or decision which requires a common carrier to state a rate from one point to another in a single amount."

This is a question of great importance, not merely to these appellees, but to the entire live stock industry of the west. It is not confined even to this, but affects all railroad transportation.

It seems to us settled against appellants by the *Covington* case. Yet it is surprising how so clear a decision can be subject to so much misconstruction. Thus the brief of counsel (page 16) says that the 60 cents per car in the *Covington* case was a charge for mere yardage, and "not a charge for the service or a part of the service of transportation." Yet can anything be clearer than that this court's opinion in that case is based upon the proposition that the service for which the 60 cents was exacted was

a part of the service of transportation, and for this reason the charge for it was included in the freight charge?

Again, in counsel's brief (page 16) they say that this court in that case did not decide that the carrier could not "legally divide or separate into different items the charge" making up the freight; yet what can be plainer than that this court did hold that the charge which counsel says was for yardage was actually a part of the entire transportation service, and that the carrier could not collect this 60 cents in addition to freight; that is, could not collect a separate compensation for a separate part of the service?

How could this court have more clearly expressed itself against the legality of dividing the freight into different items?

Both counsel and the Court of Appeals say that the gist of this court's decision in the *Covington* case is that the carrier could not compel Keith (who had his own stock yards) to pay for delivery facilities he did not want. Yet what is clearer than that this court did decide that by the payment of freight Keith paid for and was entitled to delivery facilities?

In no other way can the conditional form of the order in that case be explained, nor is that clause of the opinion intelligent, which reads:

"It is not within the power of the railroad company by such an agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for services it was bound to render without any other compensation than the customary charges for transportation."

Upon principle, as well as upon the authority of the *Covington* case, the carrier should not be allowed to split

his freight charges. If this was true before the Interstate Commerce Act, it is doubly so since the passage of that law.

Section 6 of that law in part reads as follows:

"Clause A. That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route.

The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also *state separately the terminal charges* and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates and fares and charges.

Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation, *in such form that they* shall be accessible to the public and *can be conveniently inspected.*"

"Clause C. No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid, by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and *the proposed changes shall be shown by printing new schedules, or shall be plainly indicated* UPON *the schedules in force at the time* and kept open to public inspection.

Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given."

The manifest purpose of this enactment is to give publicity to the freight rates by requiring the schedule thereof to be posted for the information of shippers, so that all shippers, the very ignorant as well as the intelligent, may readily know what the freight rate is. The object, however, will be partially defeated if carriers are allowed to post, not one freight rate, but a tariff composed of a number of items covering different parts of the carriage, and these printed, *not* upon *one* piece of paper, but upon different schedules posted in different places. For, if it be legal to make and post a separate charge for one part of the entire service, as, for instance, hauling the freight from the main line to the freight depot, then it must be equally legal to post a separate charge for the various other parts of the one entire service. Thus, those desiring to deal with railroads will have to become mathematicians before they can become shippers.

The wisdom of insisting that the entire freight shall be included in one rate is illustrated by the carrier's procedure in this case. The freight rate between Kansas City and Chicago for live stock as posted in Kansas City, was originally 23½ cents per hundred. How did appellants publish what they now claim was an advance of $2 per car in this freight rate? Not by printing new schedules, or even indicating the change upon the schedules already posted, as clearly required by clause C of the Interstate Commerce Act above quoted. They issued a separate bulletin, which appears at page 74 in the record, and in this they inform the public that thereafter a further charge of $2 (then erroneously termed by them a "terminal charge") is to be added to the Chicago live stock rate. This schedule may or may not have been posted in such proximity to the original schedule as not to mislead

shippers. As an advance in freight this was clearly not a compliance with clause C above, which required a new schedule, or that the change should be indicated *upon* the old one.

Aside from this, it emphasizes the necessity, under the Interstate Commerce Act, of having the entire freight charge included in one sum, instead of having it divided up into separate items and posted on different pieces of paper and in different places, with the necessary result of confusing shippers and thus nullifying one of the main objects of the Interstate Commerce law, which is to secure equality of rates by giving them intelligible publicity.

It is therefore respectfully urged that the present record presents questions of s ch gravity and of so great public importance as to entitle appellees to a writ of *certiorari*.

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Counsel for the Motion.

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Appellants,

against

WILSON T. KEENAN et al., Intervenors,

Appellees.

533

BRIEF OF APPELLANTS IN OPPOSITION TO APPLICATION FOR CERTIORARI.

E. D. KENNA,
ROBERT DUNLAP,
SOLICITORS FOR APPELLANTS.

The Gunthorp-Warren Printing Company, 53 Dearborn St., Chicago.

IN THE

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BRIEF OF APPELLANTS IN OPPOSITION TO APPLICATION FOR CERTIORARI.

There is no merit either in the application of appellees or in their controversy, nor is there such gravity or general importance as would require further delay of the execution of the mandate of the Court of Appeals or a departure from the ruling of this court *in re* Woods, Petitioner, 143 U. S., 202.

As a ground for seeking to invoke a hearing in this court, appellees contend that the decision of the Circuit Court of Appeals is in direct conflict with the decision of this court in the case of the *Covington Stock Yards Company* v. *Keith*, 139 U. S., 128. They seek to utilize that decision as the bed of Procrustes and then so mangle and

distort the case at bar as to fit therein. There is no analogy between the two cases either as to facts or law.

Further than this, by going out of the record, appellees claim that the decision affects all the railroads running into Chicago and the entire live stock business of that city. Yet it is a fact that the proceedings were instituted against the receivers in this case, seeking to have declared illegal a charge of $2 per car for switching or transferring the same from the line of road which the receivers were directed to operate, over the road belonging to the Union Stock Yards and Transit Company to the Union Stock Yards in the City of Chicago, because the receiver had not commodious and adequate stock yards upon their line of road in the City of Chicago, although petitioners did not wish and gave no assurance of a willingness to receive their live stock at any point on the line of road of the receivers or at any other point than the Union Stock Yards, at which was their place of business. Still, almost every railroad company of any importance, including The Atchison, Topeka and Santa Fe Railway Company, which has purchased and is operating the road formerly in the custody of the receivers, has established stock yards upon its lines of road in the City of Chicago, The Atchison, Topeka and Santa Fe Railway Company at the station of Corwith, in said city, where it is ready to make deliveries of cattle to parties who wish deliveries at such place; and yet at no time have intervening petitioners requested a delivery at such yards. They have, therefore, resorted to a subterfuge by claiming that, because the receivers did not have adequate or commodious stock yards in Chicago, therefore they should transfer live stock to the Union Stock Yards, the place of business of petitioners, without changing the rates established therefor, to-wit:

$2 per car. In other words, the contention of petitioners is that the receivers were obliged to transport and deliver live stock at the Union Stock Yards for exactly the same rates and charges which were made concerning occasional shipments delivered to parties upon the line of railroad or at the freight station of the receivers in the City of Chicago. They wish this done, notwithstanding the fact that the schedule of rates in force, prior to the shipments set forth in the intervening petitions, were amended so as to provide that, while the rate to Chicago had been 23½ cents per cwt. by the car load; as to shipments intended to be switched or transferred to the Union Stock Yards, a charge for such transferring should be made of $2 per car in addition to the former rate or the rate to the end of the road in Chicago, because, as is alleged in the answer, to perform this service requires the services of an extra transfer engine an extra train crew, and a haul of about six miles.

This case was heard upon the intervening petition, the sworn answer thereto of the receivers, and the stipulation containing admissions as to the facilities of the receivers for delivering live stock, also the schedules of rates or charges, including the amendments thereto. No replication was filed, and, therefore, the matters set forth in the answer of the receivers, except as the same may have been qualified by the stipulation, are, of course, to be taken as true. From the pleadings, therefore, the following may be briefly stated as the facts:

Several years prior to this controversy, the Atchison, Topeka and Santa Fe Railroad Company extended its line of railroad from Kansas City to Chicago, and established its freight depot at 12th street in said city. Prior thereto, and ever since, the great market for cattle in Chi-

cago was, of course, at the Union Stock Yards, which were controlled by the Union Stock Yards and Transit Company. The latter company had also built a system of terminal tracks so as to connect with the lines of railroad entering the City of Chicago. The railroad company, therefore, found that it was not necessary to establish commodious facilities for loading or unloading live stock, but it built a switch track at its station of Corwith, in the City of Chicago, so as to connect with the terminal tracks of the Union Stock Yards and Transit Company. Occasional deliveries of stock were made at its station at 12th street, or might be made upon its line or switches in the city to those who chose to take deliveries at such points. With reference to stock intended to go to the Union Stock Yards, the railroad company itself transferred the same by an extra engine and switch crew from Corwith over the switch and over the tracks of the Union Stock Yards and Transit Company to the Union Stock Yards. Prior to June, 1894, the rates or charges for transporting live stock from Kansas City to Chicago, whether delivery was to be made at 12th street or upon the line of the defendant's road or at the Union Stock Yards, were 23½ cents per cwt. by the carload. The rates theretofore had been higher than this, but owing to competition they had been so cut down as to be hardly remunerative. Prior to this time, the Union Stock Yards and Transit Company permitted the defendants to use the tracks of that company in going to the Union Stock Yards free of charge. These tracks were used under a mere license. About that time the Union Stock Yards and Transit Company began to charge the railroad companies for the use of their tracks a toll varying from 80 cents to $1.20 per car over the same.

Thereupon, the receivers who were operating the road at that time, finding that the rates were unremunerative and that they could not profitably pay such toll or carry without raising their own charges, filed with the Interstate Commerce Commission and posted at their stations an amendment to the existing tariffs, which provided for compensation for this switching or transfer charge or for the haul from the line of the railroad in Chicago over which they were appointed as receivers to the Union Stock Yards. (Pr. Rec., 23, 24, 25.) This is designated in the circular of the receivers as switching charges or terminal charges to and from the Union Stock Yards, Chicago, $2 per car.

The charge of $2 per car was not for the mere use of tracks. The fact that the Union Stock Yards and Transit Company charged the receivers a toll per car furnished the occasion and a partial inducement for the receivers to charge compensation for transferring cars to the Union Stock Yards, though prior thereto that service had been done gratuitously. But, because done without charge at one time, this gave petitioners no right to demand that the service thereafter be rendered free, except perhaps as a matter of sentiment.

But without quibbling it is clear that this charge was intended as compensation for the services in making the haul or transfer from Corwith to the Union Stock Yards. (Pr. Rec., 23, 24.) So that the result of this amendment which was posted with the tariffs in accordance with the Interstate Commerce Law, was to indicate to the public that for live stock shipped from Kansas City to Chicago for delivery upon the line of the Atchison, Topeka and Santa Fe Railroad in the city, whether at 12th street station or not, and although such shipments might be but

rare, was 23½ cents per cwt. by the carload, but for all stock to be transported from Kansas City to Chicago, and transferred and carried to the Union Stock Yards in said city, the published charges were 23½ cents per cwt. plus $2 per car. It was alleged in the answer, and therefore admitted, that these charges were reasonable (Pr. Rec., 45, 46.) The petitioners, not objecting to the reasonableness of the charge, but objecting to the manner in which the total should be ascertained, and for the avowed purpose of attacking the validity of these charges, made certain shipments under bills of lading, and others without bills of lading in October, 1894, from Kansas City to Chicago. They alleged in their petitions that they were engaged in the live stock business as live stock commission men at the Union Stock Yards in the City of Chicago, and upon the hearing of this case in the Circuit Court of Appeals it was distinctly admitted that these shipments were made advisedly and that it was intended that delivery should be made at the Union Stock Yards, the place of business of these parties. They had no desire whatever to have delivery made at any other place, and resorted to the subterfuge of having the shipments made apparently to Chicago in order to claim that the receivers did not have adequate stock yard facilities to make delivery, and that, therefore, it was illegal to charge $2 per car to transfer the same to the Union Stock Yards, the place where these parties wished delivery to be made. The very prayer of the petitioners shows this intention. They ask for an order that:

"The said receivers be directed to deliver all live stock consigned over the lines of said defendant to your petitioner at the yards of said Union Stock Yards and Transit Company without exacting or collecting from your petitioner said charge of $2 per car or any other sum by way

of freight for transporting said live stock from the point of junction of the line of the said defendant with said tracks of said Stock Yards and Transit Company to the proper unloading chutes at said stock yards of said Stock Yards and Transit Company.'' (Pr. Rec., 9, 20.)

Near the City of Chicago, upon the line of railroad operated by the receivers, is the little station of Lemont, at which place there would be but few shipments of live stock and which we might expect there would be but meager facilities for unloading. The receivers would have the right to establish charges for transportation to Lemont and provide that for transportation to Chicago there should be an additional sum, and as well might these petitioners have seized upon the fact that the facilities at Lemont were meager or inadequate, and thereupon demand that their stock should be transported to the Union Stock Yards for the same charges as they might be transported to Lemont.

But whatever the transportation charges to Chicago may have been prior to June, 1894, by an amendment made, filed and posted, as such amendments have been filed and posted by the rail road companies ever since the Interstate Commerce Law went into effect, the former rates or charges were changed so as to distinctly show that to the rates prior to that time in effect there should thereafter be added the sum of $2 per car. It is difficult to understand wherein it can be claimed that this action on the part of the receivers was illegal. *The burden is certainly upon those who claim it to be illegal to establish that fact.*

How charges for transportation are to be made up and designated is essentially a matter of detail and of administration which is still left to the common carrier.

C., N. O. & C. P. Ry. Co. v. *Interstate Com. Comm.*, decided March 30, 1896.

The Interstate Commerce Law does not assume to regulate the matter otherwise than by requiring the railroad companies to print and file with the Interstate Commerce Commission their schedule of rates. In clause C of section 6 of the Interstate Commerce Act, found on page 684, first supplement to the Revised Statutes, 2nd edition, it is provided that the railroad company shall print and keep open for public inspection "schedules" showing the rates and fares and tariff for transportation of passengers and property, and which are in force at the time upon its road. These schedules shall plainly state the places upon its railroad between which property and passengers will be carried, and "*shall also state plainly the terminal charges or any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates and fares and charges.*" This language is clear. If the transfer charge of $2 per car was a terminal charge, as it might well be designated, or if it in any way affected the aggregate of of the rates or charges contained in the schedules, it was the duty of the railroad companies to separately state it. It might well be designated a terminal charge, because it was a charge for the service of transporting over a terminal or belt railroad to reach an industry in the City of Chicago. It is immaterial how great or how little that industry might be. It was as much a terminal charge as is a charge for lighterage—a charge for transferring goods from the boat to the dock. There is no legal definition of the words "terminal charge." Those versed in railroad business and the terms incident thereto designate this as a terminal or switching charge. How can it be said they misused the words? It was not a charge for the mere use of the track in addition to the

usual and customary charges for transportation, but it was a component part of the transportation charges themselves for transferring or hauling the live stock over a line of road belonging to another company, and for which a toll had to be paid, and which line was used not under a lease, but through payment of toll. In any event, being an amendment to the existing tariff, the usual and customary transportation charges could be ascertained by adding $2 per car to the former rate in force or to the rate which would apply where stock was simply transported for delivery at some point in the City of Chicago upon the line of road in the control of the receivers.

There is no law or decision which requires the common carrier to state a rate from one point to another in a single amount. It is sufficient if the intelligent public are advised by printed schedules, so that, using their intelligence, they may be able to ascertain the aggregate charge. This the Interstate Commerce Law itself sanctions,—indeed, demands. While a railroad company may provide that the charge for transportation from A to B shall be $5, and from A to C, a further distance, $7, what is there illegal in its providing that the charge from A to C shall be $5, plus $2?

Again, what is there illegal in a railroad company charging an additional sum for the performance of a service which it is not under legal obligations to perform? It was the duty of the railroad company to carry or transport live stock over the line of road which it was authorized to construct and operate. Beyond its terminus, it cannot be compelled to carry, no matter how short a distance that may be. The duty which it has assumed is to carry over its own line, and at the terminus it may make delivery in its own depot, or, if the goods are in-

tended to be carried further, to make delivery to a connecting carrier.

See,

People ex rel. Hempstead et al., v. *Chicago & Alton R. R. Co.*, 55 Ill., 95.

Myrick v. *Michigan Central Ry. Co.*, 107 U. S., 102 and 106.

Now, it will not be pretended that if the receivers had made delivery to the Union Stock Yards and Transit Company at the point of junction, and that company had carried or transferred the stock to the Union Stock Yards, that the latter company could not charge $2 per car for that service. But the railroad company, as a common carrier, may itself, by special contract, undertake to carry beyond its own line, and for that purpose it may use a connecting carrier as its agent to transport and make delivery at the point of destination. If it does, however, such an undertaking is purely voluntary on its part, and is in no essential respect a part of its duty. But while the railroad company might use the connecting carrier as its agency in making the additional haul and delivery, it may also itself make the additional haul by its own appliances and its own servants, using the tracks of the other company, and when it does so that is merely a voluntary undertaking on its part, and for such voluntary undertaking it certainly has the right to charge a reasonable compensation in addition to the changes for transporting over its own line of road in which it was performing a duty which it was obliged to perform under the law. The common law obligation of the carrier is simply to carry at a reasonable rate and without discrimination, though with respect to the latter point the authorities differ.

But if the changes be reasonable and there be no discrimination it is difficult to understand wherein the shipper can complain with reference to the rates or changes or how they may be ascertained. The Interstate Commerce Law does not alter or modify the duties of the common carriers subject thereto, as the same have been understood by many courts, as existing at common law. It does provide, however, in addition thereto, a mode of giving publicity to establish rates by providing for the printing of schedules and posting of the same.

Now, while great stress is laid upon the bills of lading showing transportation to be made to the "Chicago Station," yet, as found by the Circuit Court of Appeals, it is clear from the record that these parties wished the stock to be transported and delivered at the Union Stock Yards in Chicago, and while it is true that transportation charges, viz: the 23½ cents per cwt., were paid to the agent at Kansas City, yet the answer states that this sum was not accepted in full for the freight charges. (Pr. Rec., 23.) If the parties attempted to contract for less than the charges stated in the schedules, the contract would be illegal, and they could not demand a delivery without paying the charges provided for in the printed and posted schedules.

See,

Savannah, F. & W. R. R. v. *Bundick*, 21 S. E. Rep., 995.

Gulf, C., &c., Ry. Co. v. *Hefley*, 158 U. S., 98 and 102.

Inasmuch as petitioners, whose place of business was at the Union Stock Yards, wished delivery at those yards, and did not wish and gave no assurance to the railroad

company (so as to justify the expense of building stock-yards) that in the future they would require stock to be delivered at some point in Chicago upon the line of railroad belonging to the Atchison, Topeka and Sante Fe Railroad Company, it is manifest, therefore, that in the discussion of this case it is wholly immaterial, as stated in the lucid opinion of the Circuit Court of Appeals, whether the receivers had adequate stock yards facilities or none at all, upon the line of railroad which they were directed to operate. The fact that the receiver did not have stock yards upon their road in Chicago when petitioners did not wish delivery there, but did wish it made elsewhere, was as immaterial in this case as would be the question of their failure to fence their right of way in the state as required by law.

It is, therefore, wholly unnecessary to discuss what might be the duty of the receivers or the railroad company engaged in transporting live stock with reference to furnishing stock yards. Petitioners have not been damaged in relation to any shipment by reason of there being inadequate stock yards or none at all. When they are willing to do as Mr. Keith did, in the Covington Stock Yards case, build stock yards upon the line of the Atchison, Topeka and Santa Fe Railroad Company—then they may be in a proper position to invoke the decision of this court in that case and ask that delivery be made in their yards without the exaction of a charge of $2 per car for transferring, or any other charge.

We may be pardoned for cursorily examining the Covington Stock Yards case. It has been wonderfully misapprehended and misapplied by appellees. The language in the opinion in that case, which has been misconstrued and misapplied by appellees so as to cover their case,

must, of course be read in the light of the question involved therein, and of the order of the lower court which was the subject of review. It is easy to garble extracts from an opinion, and by combining them construct an ingenious but absurd theory. Owing to the inherent defect in language itself, it is almost always necessary in order to understand the same, that we examine the real question under discussion. The Covington Stock Yards case, we may say, arose before the Interstate Commerce Law was passed. The provisions of that law were nowhere referred to in the opinion or considered. When we understand, however, what that case was, it is easy to understand the decision of this court. The simple question involved in the Covington Stock Yards case was whether the common carrier, or the Covington Stock Yards, which represented it under a contract which made the Covington Stock Yards the depot of the railroad company, could, without express agreement with the shipper, *make a charge in addition to the usual and customary transportation charges* for *mere yardage* or the mere use of the stock yards for the passing through of cattle. The complaint, as set out in Keith's intervening petition, was based upon the ground of an alleged discrimination in favor of the Covington Stock Yards and against Keith, who was engaged in buying and selling live stock in the City of Covington. The railway company, before the appointment of receivers, attempted by its contract to give to the Covington Stock Yards a monopoly, and it and the receivers subsequently refused to deliver at other stock yards to Keith, and in making delivery through the Covington Stock Yards made an extra charge for yardage. Keith's intervening petition was filed in a suit brought against the Kentucky Central Railroad Company for the foreclosure

of a mortgage, in which suit a receiver was appointed. The petition proceeded as stated upon the ground that an unjust and illegal discrimination was being made against Keith by the receiver acting under a written contract between the railroad company and the Covington Stock Yards Company. The yards of the latter company, located at Covington, and connected with the railroad tracks, being the only depot of the railroad company which was provided with platforms, chutes, &c., for discharging live stock. The petition also alleged that Keith was the proprietor of certain live stock lots and yards in the immediate vicinity, west of the Covington Stock Yards, and separated therefrom only by one street sixty feet in width; that he was provided with all necessary means for receiving, feeding and providing for such stock which he purchased or as might be consigned to him, and that his lots and yards were used for that purpose. Subsequently, by direction of the receiver, the platform connecting plaintiff's stock yards with the railroad were torn up and rendered unfit for use. The prayer of the petition was for a rule against the receiver to show cause why he should not deliver to Keith at some convenient and suitable place outside of the yards of the Covington Stock Yards Company, free from any other than the customary freight charges for transportation. The receiver and the Covington Stock Yards Company sought to compel Keith to receive his stock through the Covington Stock Yards and to pay a certain sum for the use of such yards in addition to the usual and customary charges for transportation of live stock to the City of Covington. Upon the answer of the receiver, the Covington Stock Yards Company was substituted as a party, and it filed a petition claiming rights granted in the agreement referred to. The agreement

between the Covington Stock Yards Company and the railroad company provided that the Stock Yards Company should furnish stock yards, etc., and afford the usual services for feed and caring for live stock. The contract made the Stock Yards Company the agent of the railroad company for that purpose and provided that the railroad company would make the yards of the Stock Yards Company its "depot for the delivery of all live stock. * * * and would not build or allow to be built upon its right of way any other depot or yards for the reception of live stock." It also provided that its business arrangements with any other railroad company or transportation line should be subject to this agreement, and that the Stock Yards Company "shall be the depot for all live stock received from its connections for Cincinnati or eastern markets." After stating certain conclusions and arguments as to the duty of the railroad company to furnish stock yards the court made the following order, which was complained of as erroneous, and ordered that the receiver should thereafter receive and deliver from and to Keith, at and through the Covington Stock Yards, all such live stock as might be brought to them or received by them for shipment over the road, upon consent of said Stock Yards Company in writing that it might be so done being filed in court on or before the 1st day of January after the entry of the decree, free of any charge for passing through said yards to and from the cars of said company. In default of such consent being so filed, it was ordered that upon Keith putting up the platform and chute erected by him on his land adjacent to the live stock switch of the railroad company north of said stock yards, the receiver should receive and deliver all such live stock to said Keith as should be sent to him for shipment at said platform,

and that said Keith should provide an agent or representative at said platform to receive said cattle as he might be notified by the railroad company or its receiver were to be delivered to them thereat, and should give the railroad company and the receiver reasonable notice of any shipment desired to be made by him at said platform, to conform to the departure of live stock trains on said road. This court held that such order was not erroneous.

So it will be seen that the charge attempted to be exacted in addition to the usual and customary transportation charges was a charge for the use of stock yards for reception or making delivery. It was not a charge for the service or a part of the service of transportation. No question was made upon the transportation charges themselves or how they should be ascertained. Whatever they were they were admitted as just and legal. The attempt was made to charge something for mere yardage which was admitted to be made and exacted *in addition* to the freight or transportation charges. With reference to the claim of the right to make an additional charge for mere yardage, it is said in the opinion on page 134:

"The contention just averted to is in effect that the carrier may, without a special contract for that purpose, require the shipper or the consignee, *in addition* to the *customary and legitimate charges for transportation*, to compensate it for supplying the means and facilities that must be provided by it in order to meet its obligations to the public."

The ruling in that case was not that the carrier might not legally divide or separate into different items the charges which, if combined, made up the transportation charges—but that he could not legally exact, *in addition* to the legitimate and customary charges for transporta-

tion, however the same might be ascertained, another charge for the use of facilities which it was the duty of the carrier to furnish to enable it to carry and deliver, since it would be necessarily understood in the absence of express agreement that the transportation charges included the furnishing of such incidental facilities.

On page 136 it is said in the opinion:

"So far as the record discloses, the yards maintained by the appellants are, for the purposes just stated, equal to all the needs of the city or the shippers and consignees of live stock, and *if the appellees had been permitted to use them without extra charge for mere yardage, they would have been without just ground of complaint in that regard.* But as the appellant, the Covington Stock Yards Company, did not accord to appellees the privileges they were entitled to from its principal, the carrier, and as the carrier did not offer to establish a stock yard of its own for shippers and consignees, the court below did not err in requiring the railroad company and the receiver to receive and deliver live stock from and to the appellees at their own stock yards in the immediate vicinity of appellant's yards when the former were put in proper condition to be used for that purpose, under such reasonable regulations as the railroad company might establish. It was not within the power of the railroad company, by such an agreement as that of November 19, 1881, or by agreement in any form, to burden the appellees with charges for service it was bound to render without any other compensation than the customary charges for transportation."

In that case it will be seen that the Covington Stock Yards could not legally make the charge because the railroad company, its principal, could not make it. It was the duty of the railroad company to furnish the facility, and a charge for the furnishing of the facility was understood necessarily to be comprised in and compensated by the customary and legitimate transportation charges, whatever the same might have been.

In the case at bar, if the Union Stock Yards and Transit Company made the transfer over its own tracks, it undoubtedly could legally make and collect the charge of $2 per car. So could the receivers if they undertook to perform a service which it was not obligatory upon them to perform as a legal duty, viz: the transportation to a point beyond the line of their railroad.

The Covington Stock Yards case is easily understood. The carrier holds out to or advises the public in some manner or other what its charges are for transportation from one point to other points. It is not material how these charges may be arrived at or figured up, provided they constitute the transportation charges. A shipper delivers his stock for transportation at these charges and thereupon the contract of carriage becomes complete, and for the charges designated the railroad company is required to transport and to make delivery at the point specified in the implied contract. When the stock reaches its destination, the carrier has no right to say to the shipper: "I deliver to you, but before you can receive you must pay for the use of the depot through which delivery is to be made." This would be manifestly unjust, because it would be exacting an additional charge for a facility already compensated for as understood by the parties. The service of transportation necessarily requires as incidental thereto the furnishing of the facilities for transportation, and the transportation charges must of themselves as generally understood, no matter how made up or ascertained, necessarily include or embrace compensation for the furnishing of the facilities to make the transportation or carriage. It is necessarily understood in the absence of express agreement to embrace the furnishing of cars in which the goods are to be transported, the use of the track over which the cars are to

to run; and the carrier would no more have the right to make an additional charge for mere yardage or the use of the stock yards for the passing in or out of stock than it would have the right in the absence of agreement to make a charge extra and additional to the legitimate transportation charges, for the use of its cars or the use of its railroad track. That is all that the Covington Stock Yards case decides. It is generally understood that in the transportation charges, however they may be designated or arrived at, there is embraced the sum or sums of the compensation of the carrier for transportation and delivery. This total may be fixed in a single sum or may be ascertained by adding to a given sum another sum which may be fixed as terminal charges or a charge which, under the Interstate Commerce Law, falls within "any rule or regulation which in anywise change, affect or *determine any part* or the *aggregate* of the rates, fares or charges."

But, certainly in the Covington Stock Yards case, the receiver or the Covington Stock Yards Company, as his agent, had no right to compel Keith to pay for a service which he did not wish rendered. They had no right to compel him to receive his stock through the stock yards of the Covington Stock Yards Company and pay therefor, in addition to the usual and customary charges for transportation to those yards—certainly not when he was willing to construct his own yards just as convenient, and where delivery might be made to him in his own yards direct.

It is idle to use vague expressions, such as "charges in addition to freight," as though "freight" meant a single isolated figure. What we are concerned about is in ascertaining what are the usual or fixed charges for transporta-

tion. When we have ascertained what they are the aggregate thereof is what the carrier has the right to collect. The charges for transportation, as fixed in the schedules and amendments thereto filed according to law by the receivers, were for transporting cattle from Kansas City to a point in Chicago on the line of the Atchison, Topeka and Santa Fe Railroad, 23½ cents per cwt. The fixed schedule of charges for transporting from Kansas City to the Union Stock Yards in Chicago was 23½ cents per cwt. by the car load plus $2 per car, and this was so plain that any shipper who understood simple arithmetic was easily advised of the same—so plain that he who runs may read. These petitioners were at all times thoroughly advised of the charges, but they seek by their suit to have a portion of the charges ignored and to receive their shipments at less than the schedule charges, and thereby be discriminated in their favor against the rest of the public.

The decision of this court in the Covington Stock Yards case was very clearly analyzed in the able opinion of a very able court, and it would be a little singular indeed if that able and disinterested court should be mistaken in its understanding of the decision of this court, and that only solicitors for appellees, blinded by their interest, should be able to read it understandingly.

The application should be denied.

E. D. Kenna,
Robert Dunlap.
Solicitors for Appellants.

DAVENPORT.

C.R.I.&P.R.R. Yard.

C

C.M.&St.P.R.R.

C.M.&St.P.R.R.

MISSISSIPPI RIVER

N

Arsenal shops.

Arsenal R.R.

C.R.I.&P.R.R.

R.I.&P.R.R.
R.I.&M.C.R.R.
C.B.&Q.R.R.

C.R.I.&P.R.R.

A

B

SOUTH CHANNEL

ROCK ISLAND.

C.R.I.&P.R.R.
C.B.&Q.R.R.

Map of

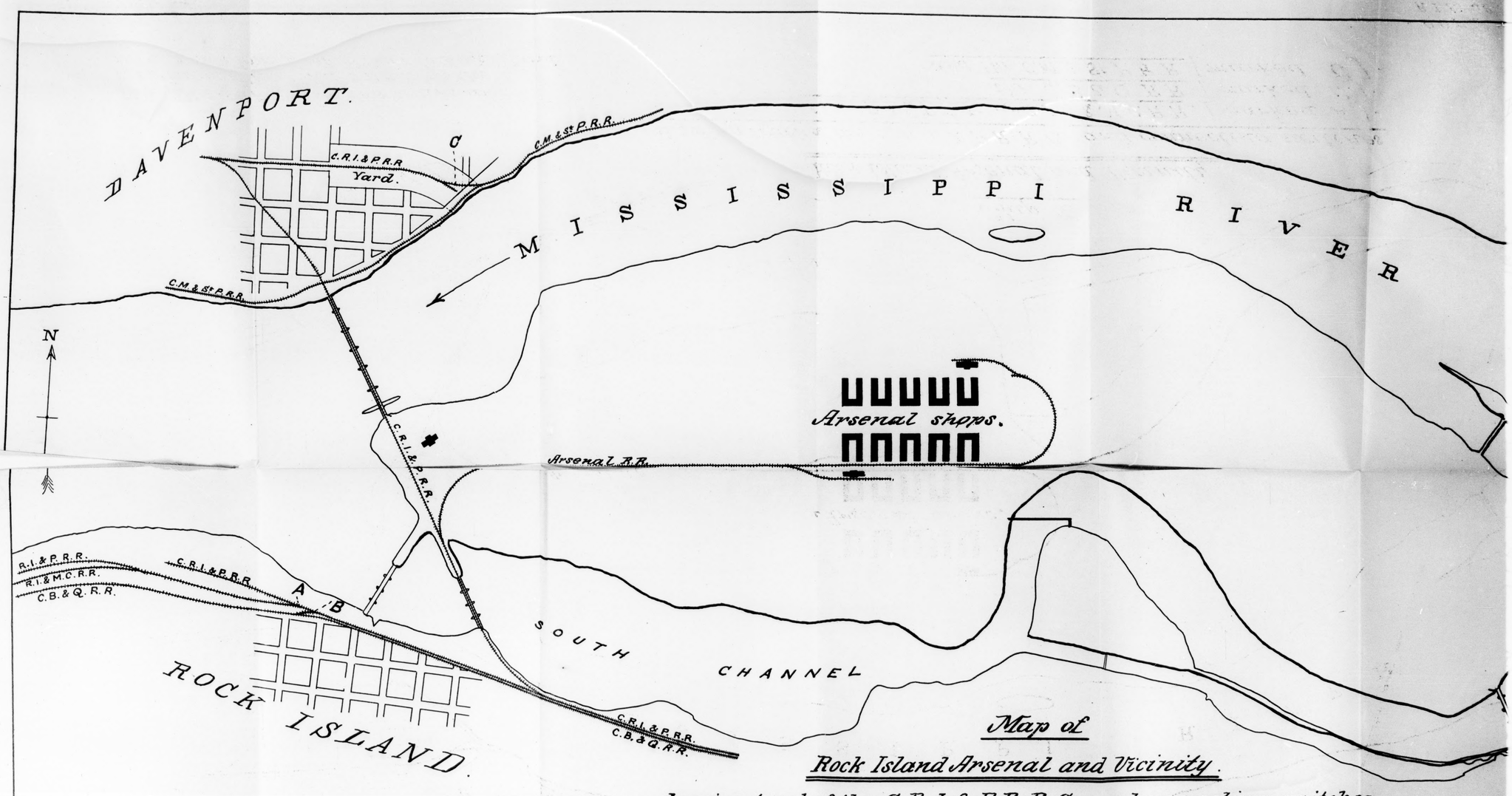
Rock Island Arsenal and Vicinity.

showing track of the C.R.I. & P.R.R. Co., and connecting switches of the R.I.&P.R.R. and R.I.&M.C.R.R., [marked: A.]- the C.B.&Q.R.R. [marked: B.]- and the C.M.&St.P.R.R. [marked: C.]-

Note: The C.M.&St.P.R.R. uses the tracks and terminals of the C.R.I.&P.R.R. on the Illinois side from East Moline to Rock Island.

Rock Island Arsenal.
July 7th 1896.

O.O.File 15
R.I.A. 581.



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C

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Arsenal shops.

Arsenal R.R.

C.R.I.&P.R.R.

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B

SOUTH CHANNEL

C.R.I.&P.R.R.
C.B.&Q.R.R.

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